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CPSC AUTHORIZATION

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSUMER

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

REAUTHORIZATION OF THE CONSUMER PRODUCT SAFETY COMMISSION

MAY 13, 1987

Printed for the use of the
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AUTHORIZATION OF THE CONSUMER PRODUCT SAFETY COMMISSION

WEDNESDAY, MAY 13, 1987

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON THE CONSUMER,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m. in room SR-253, Russell Senate Office Building, Hon. Albert Gore, Jr. (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Thurgood Marshall, Jr., staff counsel and Chuck Harwood, minority staff counsel

OPENING STATEMENT BY SENATOR GORE

Senator GORE. If our guests will take their seats, we will call this hearing to order and get started.

As Chairman of the Consumer Subcommittee, I very strongly support the legislative efforts to improve consumer product safety and enhance the ability of the Consumer Product Safety Commission (CPSC) to accomplish its mission. The reauthorization of the CPSC is a Commerce Committee priority. The last CPSC authorization was approved by the Commerce Committee in May 1985 and passed the Senate two months later, only to fail in conference.

The CPSC was established in 1973 to reduce the number of deaths and serious injuries associated with dangerous consumer products. Its efforts comprise one of the most important public health programs in America, in terms of lives saved and injuries avoided.

The states and product manufacturers have also played an important role in promoting consumer product safety, having devoted resources to safety promotion, research and marketing. Indeed, several valuable safety requirements result from industry self-regulation.

CPSC efforts are essential in reducing the estimated 30 million consumer product injuries that occur each year. Injuries associated with all-terrain vehicles (ATVs), for example, are staggering. They range as high as 7,000 each month. As many as 20 ATV riders are killed in ATV mishaps each month, for a total of almost 700 ATV deaths so far. Half of those injured and killed are children. In the face of these startling statistics, I question whether the CPSC's action thus far has been adequate or timely.

The current lack of leadership at the CPSC sends the wrong signal to anyone who cares. The signal is that as far as the CPSC is

concerned, it is "open season" on consumers. Given the CPSC's lack of leadership, it is hardly surprising that efforts to develop voluntary standards within the ATV industry have been a disaster. These and other serious problems at the agency cause me to question whether the current structure of the agency should remain in place.

The ATV situation is only one example of how the CPSC's failure to take swift, decisive action has contravened Congressional intent underlying the establishment of the agency and its mission.

In addition, it is my understanding that the CPSC is considering the application of cost-benefit analyses to voluntary decisions by manufacturers to recall dangerous consumer products. An agency with such limited resources simply does not need to deter safety measures when the industry determines that a product is sufficiently hazardous to warrant voluntary recall.

Those limited agency resources would be better spent on enforcement actions to remove hazardous products where recalcitrant manufacturers are unwilling to act voluntarily. I intend to delve into this issue during our authorization hearing this morning, and I want to make it clear that I am very troubled by the direction this policy seems to be taking.

I have briefly reviewed the Consumer Federation of America's study of the CPSC's failings. This study details numerous shortcomings and problems, and makes the point that CPSC failures result in injuries and unnecessary death, consumer litigation, increased disability and health insurance expenditures, and lost wages.

That is not what the Congress intended, and it will not be tolerated. We are going to explore the issues and proposals set forth in the report in more detail as we proceed with the authorization process.

Additional authorization issues we will examine this morning include whether to change the structure of the CPSC from a five-member commission to a single-headed agency; whether to maintain the CPSC's independent status; whether the overall performance of the agency is consistent with its statutory mandate; and CPSC activity concerning toy safety and all-terrain vehicles.

I would like to recognize the distinguished ranking Republican member, Congressman McCain.

OPENING STATEMENT BY SENATOR McCAIN

Senator McCAIN. I have been promoted.

Senator GORE. Are you not the ranking member?

Senator McCAIN. Yes, but I am a Senator. Thank you.

Senator GORE. Oh, Senator McCain. Sorry about that.

Senator McCAIN. I thank the Chairman, and I appreciate the opportunity.

Senator GORE. We served together in the House, too. That is my only excuse.

Senator McCAIN. I would like to thank the Chairman for holding this hearing. I appreciate his opening remarks, and I share many of his concerns. I am convinced that we are talking about some extremely serious issues here. You mentioned the ATV. Seven hundred lives have been lost, and the number of injuries resulting

from that has been astronomical. As the Chairman mentioned, over half of these have been sustained by young people.

I think the CPSC has enjoyed some success in reducing product-related injuries, and I think over time it has demonstrated that government and industry can work together to increase the safety of consumer products. However, I think some of the testimony during today's hearing will show that the CPSC has not lived up to its full potential from the standpoint of both industry and consumers.

Mr. Chairman, we will be talking about toy safety, all-terrain vehicles, butane lighters and probably other products which have posed a hazard to the consumers. But, I think we are also talking about a larger issue here, and that is what is the proper role of government as far as the consumer is concerned. That is really the crux of the matter. How much or how little should this government regulate or involve itself in the affairs of industry? I think there is definitely a role. I think that most Americans certainly agree with that. The question is how far-reaching is that role.

Some people have argued that during previous years perhaps the CPSC overstepped its boundaries and, indeed, the intent of Congress. An argument can be made today that perhaps the present Commission has not lived up to the requirements as laid out by Congress at the formation of this organization.

Let me also point out, Mr. Chairman, this bill expired in 1983. In 1983 and again in 1985 Congress attempted to reauthorize the Commission. There is a long history of reasons why the Commission has not been reauthorized. I would suggest one of the reasons was an inability of the Congress to act in a bipartisan fashion in trying to shape legislation and make the necessary concessions and compromises in order for any legislation which has controversy attached to it to be successful.

I share your commitment in attempting to achieve the long overdue reauthorization of the CPSC, and I hope we can achieve that with a minimum of partisanship and work closely with our colleagues in the House as well as in the administration because this reauthorization is long overdue.

Thank you, Mr. Chairman. I look forward to the testimony of the witnesses.

Senator GORE. Thank you, and I want to share those sentiments very strongly and commit to exactly that kind of process.

I have an opening statement that Senator Hollings would like inserted in the record.

[The statement follows:]

OPENING STATEMENT BY THE CHAIRMAN

Mr. Chairman, this hearing on the reauthorization of the Consumer Product Safety Commission (CPSC) provides an opportunity for the Subcommittee to examine the role of this particular agency—and of government in general—in improving the quality of life in our nation.

It is not mere happenstance that we live in the safest society of any nation in the world. Rather, it is because we have recognized that the paramount function of our government is the protection of its citizens from harm.

The Consumer Product Safety Commission, which serves to protect consumers against injuries from hazardous products, is a vital part of this commitment. It's estimated that each year, the research, regulatory, and informational activities of the CPSC prevent more than 200,000 needless injuries and countless deaths.

Yet the Reagan Administration has repeatedly sought to abolish or weaken the CPSC on the grounds that it represents needless government spending and an unnecessary restraint on the free market. We would never accept that argument for other vital governmental entities which protect the American public—the military, the FBI, and the Federal Aviation Administration, to name a few—and we shouldn't accept it for the CPSC either.

The last formal authorization of the CPSC to become law was the Consumer Product Safety Act Amendments of 1981. Although this Committee approved authorization legislation in both the 98th and 99th Congresses, those efforts failed to become law. As a result, the CPSC has operated without an authorization since the 1981 law expired in 1983.

It is crucial that this Committee and the Congress proceed with the authorization of the CPSC. The failure to do so over the past few years has fueled questions about the continuing viability of the agency's mission to protect the American public from death and injury associated with dangerous consumer products. This situation has been compounded by internal squabbling at the agency and relentless attacks by the Administration which has slashed the CPSC's budget by one-third since 1981.

The CPSC and the laws it enforces were created for reasons which are as compelling now as they have ever been. At its inception, the agency's mere existence had a deterrent effect on the sale of dangerous consumer products. I am concerned that this may no longer be true. These hearings will address this issue as well as proposals to alter the CPSC's structure, and the CPSC's consideration of toy and all-terrain vehicle safety. We will also examine the effect that a proposed cost-benefit analysis for voluntary hazardous product recalls will have in deterring voluntary actions of the market to improve product safety.

The experience and continuing interest in this agency of the witnesses today will be valuable to our deliberations. I intend to work closely with Chairman Gore and the members of the Consumer Subcommittee on this important authorization.

Senator GORE. Our first witness is the Honorable Terrence Scanlon, Chairman of the CPSC, accompanied by Commissioners Carol Dawson and Anne Graham, Mr. Thomas Murr, Deputy Executive Director, and Mr. James Lacy, General Counsel.

Mr. Scanlon, I understand you have an opening statement.

Mr. SCANLON. Yes, I do, Senator.

Senator GORE. Without objection, it will be included in full in the hearing record, and please feel free to present any or all of it or portions of it as you see fit.

STATEMENT OF HON. TERRENCE M. SCANLON, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION, ACCOMPANIED BY CAROL G. DAWSON AND ANNE GRAHAM, COMMISSIONERS; THOMAS W. MURR, JR., DEPUTY EXECUTIVE DIRECTOR; AND JAMES V. LACY, GENERAL COUNSEL

Mr. SCANLON. Thank you, Mr. Chairman and Senator McCain. It is a pleasure for my colleagues and me to appear before this Subcommittee today to discuss reauthorization of the Consumer Product Safety Commission and its role in protecting people from unreasonable risks of injury associated with consumer products.

Although no reauthorization legislation has been enacted for the Commission since 1981, the Senate and House have passed differing reauthorization bills in each of the last two Congresses. We hope this will be the year that a single reauthorization bill for the Commission be agreed to by both bodies. While our statutes are permanent law, reauthorizing legislation gives renewed Congressional sanction, direction and public assurance.

When such a bill is considered, we request that it be of at least three years duration or four years if two-year budget cycles are to be adopted. Also, we request that authorized funding be maintained at levels sufficient to support current activities as well as

future pay and benefit increases, rent adjustments and other such items over which we would have little or no control.

Mr. Chairman, this agency, using the array of tools that Congress has provided, stands ready to address consumer product safety hazards wherever they develop. Our task is one which requires not only vigilance but a constant sense of responsibility to consumers and industry as well.

Once a substantial hazard is discovered, it is our job to find a remedy and assure that it is applied. The way that we carry out our duties can have great consequences for the well-being of consumers, and it can also have profound effects on manufacturers. So we must walk the narrow path of first assuring safety within our jurisdiction but, if possible, without unnecessary economic upheaval in the marketplace.

Mr. Chairman, one of the important features of our safety efforts each year is the selection of priority projects for the succeeding year. We fully fund these priority projects in order to apply the maximum expertise and effort necessary to reach an early solution. Public comments on recommended priority projects are sought and received at a public hearing each year.

Finally, the Commission makes its selections after reviewing the public and staff recommendations, considering the frequency and severity of injuries and deaths associated with the product, the vulnerability of the population at risk, and other factors.

Our priority projects for Fiscal Year 1987 are: fire toxicity; poison prevention; safety for older consumers; all-terrain vehicles; child drownings in residential pools; and riding mowers. At the end of this fiscal year, the first three will revert to ongoing activity status using the information developed while the project was a priority. However, the other three projects, ATVs, child drownings in residential pools and riding mowers, will be continued as priority projects in Fiscal Year 1988.

Since it is one of the most resource-intensive projects ever undertaken by the Commission, let me say a few more words about ATVs with which 696 deaths and an estimated 290,000 injuries have been associated since 1982.

In the spring of 1984, due to the rising number of accidents associated with ATVs, the Commission began an investigation of ATV-related incidents. That led to the issuance of an advanced notice of proposed rulemaking in May of 1985, the first in several years, and the creation of an all-terrain vehicle task force at the Commission.

This task force was assigned the long and difficult job of conducting all of the pertinent studies, surveys and analyses as well as monitoring the industry's education and training efforts and coordinating a series of six public hearings held around the country. The task force findings and recommendations were forwarded to the Commission on September 30, 1986, and in December the Commission directed a number of steps be taken.

In brief, those steps included: (1), a request to the ATV industry to cease marketing ATVs intended for children under 12; (2), letters to appropriate officials stressing the safety information developed by our ATV task force; (3), an update of our consumer safety alert on ATVs; (4), development of an extensive notice program that expands upon the task force's labelling recommendations; (5),

expressing the Commission's displeasure at the slow rate of progress on the voluntary standard; and (6), continuing to participate in development of that standard while conducting the technical work necessary to support the issuance of one or more notices of proposed rulemaking to address performance characteristics of three- and four-wheeled ATVs.

Additionally, the Commission voted two to one—mine was the negative vote--to seek an enforcement action under the provisions of section 12 of the Consumer Product Safety Act in the U.S. District Court for appropriate relief necessary to protect the public. The Commission is seeking the assistance of the Department of Justice in this matter.

One of the effective tools in our inventory is the enforcement authority provided in section 15 of our statutes. This is the instrument which requires manufacturers to report suspected product hazards. Filings for the first six months of Fiscal Year 1987 are running ahead of a comparable period in 1986.

Also, it empowers us to negotiate or impose corrective actions when otherwise unregulated products are found to pose substantial hazards. For example, in Fiscal Year 1986, there were 60 recalls of items intended for use by children, 46 of which involved toys. Included among those were: a recall of more than 250,000 children's expandable enclosures which had been involved in three deaths; a recall by six different firms of more than 113,000 hazardous toy helicopters which had been involved in 15 incidents, including four cases of permanent blindness in one eye; and a repair program affecting approximately 625,000 strollers which had been involved in collapsing incidents that resulted in six finger amputations and eight other serious injuries to children.

In addition, Fiscal Year 1987 has already seen: (1), a refund program involving more than 1.6 million crib toys which had been involved in two deaths; and (2), a recall of a robot toy that is expected to be one of the costliest, to the manufacturer, in Commission history.

Just for the record, Mr. Chairman, it should be noted that over 95 percent of the corrective action plans that the Commission is involved in are agreed to voluntarily by industry.

Also, I might mention that the Commission is participating in the development of 14 voluntary standards and monitoring the progress of 25 others. These efforts are in keeping with the 1981 amendments to the Consumer Product Safety Act which require that we rely upon voluntary rather than mandatory standards whenever such a voluntary standard would eliminate or adequately reduce a risk and when there is a likelihood of substantial compliance with its provisions.

Successful voluntary programs provide adequate safety features more quickly and generally eliminate protracted and expensive litigation. Please be assured, however, that while we prefer voluntary standards whenever possible, the Commission always stands ready to initiate mandatory proceedings if necessary.

Again, it is a pleasure to testify on behalf of the Commission's reauthorization. This agency plays a vital role in the maintenance of safe products in the marketplace. We urge a favorable consideration of our extended Congressional mandate.

Mr. Chairman, I have a very brief personal statement that I would like to read.

Senator GORE. Please proceed. I thought that was your statement.

Mr. SCANLON. That statement was on behalf of the Commission, and I have a very brief personal statement.

Senator GORE. All right.

Mr. SCANLON. So that you and your colleagues are in a better position to judge the worthiness of these views, permit me to mention some of the Commission's recent accomplishments.

In the enforcement area in fiscal year 1986, civil penalties collected came to $250,000, less than in 1985 but higher than in five of the preceding eight years.

Also, regulated product recalls, which totaled 77 in fiscal year 1986, were higher than four of the previous five years.

Moreover, the total number of recalls, 172, compared favorably with the totals in each of the previous five years. Some of those recalls, I might add, were particularly notable. Last fall, for instance, one company agreed to refund the purchase price of approximately 1.6 million crib toys to resolve Commission concerns that these toys might pose a strangulation hazard.

About the same time, another firm, in what could be the most costly recall to the manufacturer in the history of the Commission, agreed to replace almost 1.5 million rather expensive robot toys or parts thereof because they were found to violate the Commission's lead paint standard.

Then there was the case involving McDonald's which was in the midst of giving away Lego plastic building blocks as part of a sales promotion. It was apparent to me when I saw these blocks being distributed that they could wind up in the hands of children under three who could choke. Luckily, no children had suffered strangulation injuries up to that point, but the potential for harm was clearly evident, and when the Commission brought that possibility to McDonald's attention, the firm quickly agreed to exchange these blocks for the larger ones.

In addition to these recalls, which could cost the manufacturers millions of dollars in several instances, the Commission's ATV task force also completed its comprehensive evaluation of ATVs and, as I mentioned earlier, issued its report—on schedule. That report was the product of 18 months work which cost the Commission roughly $2 million, a large sum for an agency the size of ours.

Other Commission activities of note in recent months include: (1), the publication of a proposed rule on methylene chloride, a chemical solvent used in paint strippers and spray paints; (2), issuance of an enforcement policy on the labelling of certain consumer products containing asbestos; and (3), a decision to continue involvement in the development of adequate voluntary standards for pressed wood products containing formaldehyde.

In all, the Commission has voted on over 30 matters of concern since I resumed the chairmanship last July 17.

In the area of State and local cooperation, considerable progress has been made as well. In September 1986 and April 1987, memoranda of understanding were signed with the National Conference of State and Building Codes and Standards and the Council of

American Building Officials, respectively, paving the way for mutually beneficial exchanges of information in the critical area of home safety.

Also, in November 1986, a very successful conference with our State designees was held to help promote cooperative activity on product safety problems of mutual concern. Not only was this the first such conference in six years but, as a consequence of it, cooperative work plans have been submitted by 48 states, the District of Columbia and three territories. When implemented, these plans will advance a number of CPSC projects at little or no additional cost to the Commission.

Last, but certainly not least, several major consumer education efforts have borne fruit in recent months. Last September, a joint press conference with the Juvenile Products Manufacturers Association was held to promote safer use of nursery equipment.

Then, in November, the Commission and the Toy Manufacturers of America conducted a press conference on toy and holiday safety that generated extensive nationwide press coverage.

Also, the Commission conducted a press conference this past January on home heating safety.

I could go on, Mr. Chairman, but I think these highlights demonstrate that the Commission made significant contributions to consumer product safety in 1986 and so far in 1987. With your help plus the help of many interested State, local and private organizations, we will continue to do so in the months and years ahead.

Thank you very much.

Senator GORE. Thank you.

Senator Kasten, do you have a statement before we go to the other two commissioners?

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Mr. Chairman, I look forward to working with you on the reauthorization of the Consumer Product Safety Commission, and I hope that this is the first of a number of hearings before this Subcommittee on issues of product safety and liability.

The CPSC has been without an authorization since 1983. And, at this point, to simply reauthorize the CPSC may not be adequate. Today's hearing should shed a great deal of light on that issue.

As the Subcommittee is considering the effectiveness of the CPSC, I think two points must be kept in mind. First, it is important to look beyond the number of rules promulgated or the number of products recalled. Because of its mandate, much of what the CPSC does is undertaken in cooperation with industry. These are not the kinds of activities that make the major newspapers or attract the attention of congressional committees. And yet, I think it is clear that a high degree of industry cooperation was contemplated when the CPSC was established. So I urge the Subcommittee to consider all of the activities of the CPSC, not just those that involve some sort of Commission-mandated action by industry.

Second, the CPSC's budget is very limited. Any time Congress orders that the CPSC undertake a new task, the money must come from somewhere, and usually that somewhere is another program within the agency itself. So while it may be appropriate to tell the

CPSC that it must undertake additional activities, it is also appropriate to consider which activities within the agency should be cut back or eliminated.

Authorizing legislation for the CPSC was last enacted in 1981, after 4 days of hearings before this Subcommittee and a great deal of controversy. May you have the same success, Mr. Chairman, with none of the controversy.

Senator GORE. Commissioner Dawson, Commissioner Graham, do you have statements?

Ms. DAWSON. Yes. Thank you, Mr. Chairman. I do have a prepared statement and I would be happy to submit it for the record. I have a few additional comments I would like to make at this point, however.

There has been some discussion, as you know, about a potential change in the structure of this agency. I have said in the past, and continue to believe, that a collegial structure is still preferable. I think it was a desirable structure in the beginning.

The fact that there have been some problems should not lead us to abandon that system. Perhaps the committee may want to look into ways to clarify or fine tune the statute to improve the operation of the collegial structure.

One of those clarifications, as I suggest in my prepared text, is that the quorum requirement for meetings be changed from three to two. As you know, the quorum was established at three because the agency was authorized for five Commissioners.

However, at present we only have three Commissioners. Funds have not been appropriated for the other two, and this means that without a two member quorum any one Commissioner can effectively stop a meeting from occurring.

That is one thing which I would appreciate the subcommittee considering.

[The statement follows:]

STATEMENT OF CAROL G. DAWSON, COMMISSIONER

Thank you, Mr. Chairman and members of the Subcommittee, for giving us the opportunity to discuss the reauthorization of the consumer Product Safety Commission.

You have seen our reports and familiarized yourself with our activities during the past few years, and the Chairman has outlined the major aspects of the agency's operations, so I need not repeat that information here.

There are other matters that deserve your attention, however, and I ask the Subcommittee to look at these issues and give the agency the benefit of your guidance.

With regard to the agency's operations, the Commission has run into a problem with the quorum requirement of the CPSA. As you know, section 4(d) of the Act requires that a quorum consist of three Commissioners. That requirement is reasonable when there are five Commissioners, but Congress has appropriated funds for only three Commissioners.

Thus, the absence of any single Commissioner makes it impossible to conduct business. I urge that this panel amend the CPSA to permit a two-member quorum.

In the past, the Chairman has indicated that if a two member quorum were to be adopted, he would favor a requirement that the chairman be one of the two members. But no single Commissioner should be allowed to obstruct the work of the Commission; thus a simple two-member quorum is appropriate.

If the Commission is to act as a collegial body, then it must have some authority over the activities of the senior staff members upon whom it relies to carry out its decisions. Top management must be accountable to the entire Commission, not just the Chariman. If not, the collegial body becomes merely an advisory board to the Charirman. I do not believe that is the intent of the law. I would suggest, therefore,

that the Subcommittee consider clarifying the CPSA regarding the full Commission's authority over key agency staff.

Some have suggested that the CPSC's structure be altered, either as an independent agency with a single administrator or to become part of a larger cabinet-level agency. Reasons given for such suggestions include cost and efficiency considerations, as well as overall management.

If the concern is efficiency, a three-member collegial structure already produces savings of at least $500,000 annually over a five-member structure while maintaining the benefits of a Commission structure. This is not to say I don't support even more government efficiency and cost-cutting, which is why I pushed so long and hard for the Commission to move from its downtown location to Bethesda. That move will save an estimated $300,000 a year in rental costs alone.

But cost-cutting aside, alternatives to the collegial system have definite disadvantages that Congress will want to explore fully before reaching a decision.

While the collegial system is not perfect, I believe it is still the most effective alternative. We should not allow problems in a meritorious system to cause us to abandon the system. Perhaps it is better to clarify and fine tune.

Since only Congress can make a decision on structure, I know that members of this Subcommittee, and and all members of the Senate and the House, will study the pros and cons of any such proposals very carefully.

Whatever direction the Congress wishes to take, I urge that the agency's current size and funding be retained. There are some fine public servants with unique expertise and accumulated knowledge currently on the staff. It would be tragic for the American people to lose the benefit of that skill should considerations of efficiency and cost not be balanced by considerations of due process, thoughtful decision-making, and thorough research. CPSC has been meeting its obligations to the public. Any proposal to change its structure should be given serious and thorough review.

Thank you again for this chance to address some important issues confronting the CPSC. I would be happy to answer any questions you may have.

Senator GORE. Thank you.

Commissioner Graham?

Ms. GRAHAM. Mr. Chairman, I do not have a statement for the record, so I will just say that I endorse Commissioner Dawson's remarks.

Senator GORE. Well, let me lead off by saying I have an open mind on this question about the proper structure of the CPSC.

The increased attention being given to the proposal for a single administrator arises largely from the intense frustration felt in both the House and the Senate by many at the current performance of the CPSC. It may well be that some of these proposals for structural change are not in the best interest of the Commission, and we need to examine them very closely.

But I think that that examination is overdue.

Mr. Scanlon, you have talked a lot about ATVs in your statement today and in recent days. You personally as a member of the Commission, have supported the following actions in the area of ATVs:

Number one, letters to officials stressing safety information;

Number two, an update of the CPSC consumer alert on ATVs;

Number three, an expression of displeasure at slow industry progress on voluntary standards;

Number four, a request to the industry to voluntarily cease marketing ATVs intended for children under twelve.

In your statement you note that there have been almost 700 deaths in the last few years and almost 300,000 injuries. And yet, you oppose any action other than a letter or a request or an expression of displeasure. You voted against the Commission's proposal to recall ATVs.

Do you honestly believe that your recommended action is strong enough, given 300,000 injuries and 700 deaths?

Mr. SCANLON. I think my votes and my conduct of the ATV activity at the Commission have been judicious. I am a strong proponent of voluntary standards and, as the committee knows, they are mandated by the Congress. Voluntary standards were made mandatory by the Congress in 1981, in amendments to the Consumer Product Safety Act, that asked the Commission pursue a voluntary standard activity when feasible.

I must say that we are frustrated——

Senator GORE. If I could interject there, you are not saying that Congress directed you not to pursue mandatory action on ATVs and directed you to just approach it with a request for a voluntary action. Are you not saying that?

Mr. SCANLON. Not at all.

Senator GORE. OK. I misunderstood.

Mr. SCANLON. Our first approach is to obtain voluntary standards. When they are not feasible, then we will use stronger enforcement activities. We have done that, Senator.

Senator GORE. You have not done that, Mr. Chairman. You have not done that. What I asked you is whether or not you believe that your recommended action is strong enough, given 700 deaths and 300,000 injuries, half of them to children. Do you think that your recommended action is appropriate or strong enough?

Mr. SCANLON. I think my recommended action is the most judicious at this time.

Senator GORE. That is not the question. Judicious is a different word. Do you think it is strong enough? Do you think your recommended action is strong enough, given 700 deaths and 300,000 injuries?

Mr. SCANLON. I do.

Senator GORE. Tell me why?

Mr. SCANLON. Because historically the average time for the Commission to promulgate a mandatory standard is about four and a half years. In all cases these were litigated, and so you had lots of staff time taken up during this litigious period.

What we did at the Commission was conduct an 18 month study, the most comprehensive in the history of the Commission. We looked at every aspect of ATV safety.

We set a deadline for the report due to the Commission of September 30, 1986. That deadline was met. Shortly after——

Senator GORE. 350 died during that study, correct?

Mr. SCANLON. Well, during that same time, Senator, we could have pursued a mandatory standard and it would have taken four and a half years. Then the question would be how many deaths and injuries occurred during the average four and a half year period.

Mr. LACY. If I may, Senator, under the 1981 amendments to the Consumer Product Safety Act, I would cite section 7, the agency has a requirement that is Congressionally mandated to rely upon voluntary consumer product safety standards in the development of any regulatory action.

I think it is fair to say that over a period of time steps have to be taken by Congressional mandate that the Senators and the Con-

gressmen have given to the CPSC to work in development of voluntary standards. So it is really fair to say that some time has to be given to that effort.

Senator GORE. Two of the Commissioners disagree with your recommended action on that, and I would like to ask them to comment on why you felt that a mandatory approach was appropriate.

Ms. GRAHAM. Mr. Chairman, I feel that it was an imminent hazard, that the consumer is not aware of the extent of the risk that he or she is taking with an ATV. I was concerned by the numbers of deaths and injuries, and I feel that with 20 deaths a month and approximately 7,000 reported injuries, that we had a mandate to do something that is strong.

Senator GORE. Commissioner Dawson.

Ms. DAWSON. I do not have a lot to add to what Commissioner Graham has said, except to say that I approached this issue with an open mind. And frankly, I was skeptical in the beginning that the Commission would have an answer to this problem.

However, we did achieve quite a bit in our study. I think our staff has gained a lot of knowledge about the reasons for these accidents. We did not know why the accidents were occurring. It took time and resources to give our staff the opportunity to study exactly why the accidents were happening.

We do know a lot more now. I also feel now that some relief is appropriate, whatever relief the courts may decide. I believe that, as Commissioner Graham has indicated, there were many purchasers of these vehicles who did not understand the risks.

Senator GORE. My time has expired. I will come back to this in the next round.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Scanlon—and other members of the Commission, please feel free to respond after Commissioner Scanlon does. On March 30, 1987, the entire Commission sent to Mr. Isley, President of the Specialty Vehicle Institute of America, a letter concerning the progress of the voluntary ATV standard.

What prompted the Commission to send this letter, and has any reply been received from Mr. Isley? And how did that in any way contribute to the progress of resolving this issue?

Mr. SCANLON. The purpose of the letter was to advise the industry, Senator, that we were frustrated with both phase one and phase two of the industry's attempts to obtain a voluntary standard utilizing the ANSI process. We were frustrated with what they were doing on standardization of controls, on labeling, on minimum age requirements.

We were even unhappy with what little they were doing on public education.

The answer to the second part of your question is that we have not, to date, received a response from Allen Isley of SVIA, the trade association.

Senator MCCAIN. Do you think it is an inordinate length of time for us to receive a response?

Mr. SCANLON. Yes, and I think an inordinate amount of time has elapsed for an industry to move on a voluntary standard.

Senator McCAIN. Then it seems to me you are making an argument, Chairman Scanlon, for a mandatory rule.

Mr. SCANLON. We have started that process, and this is what I attempted to advise Senator Gore. On May 31, 1985, we published the advanced notice of proposed rulemaking, which is the first step in the mandatory rulemaking process.

On December 18, 1986, we voted to proceed with an NPR. Just the week before that, we had voted for a section 12 action.

Senator McCAIN. But if I might interrupt, but you yourself voted against that, is that correct?

Mr. SCANLON. I did not vote against the NPR, no, I did not. What I voted against was the remedies called for in the enforcement action.

Senator McCAIN. But you do favor a mandatory rule, is that right?

Mr. SCANLON. I voted for it in 1985, Senator.

Senator McCAIN. Would either of the other two, Ms. Graham or Ms. Dawson, would you care to comment on that?

Ms. GRAHAM. Senator, I would just like to go on record as saying that this industry has been totally unresponsive to us, and I feel they are not being honest with the American people about the hazards associated with ATV's.

Ms. DAWSON. Thank you. I support the use of voluntary standards whenever they are reasonable and useful, and I think in many cases they are. In this particular case, we have given the industry every opportunity to come up with an adequate standard and thus far it has not.

And so therefore, I believe the Commission has to move. The important thing is that it moves as soon as it can. It is urgent that we do that for the consumer.

Senator McCAIN. How long is it going to take us to implement a mandatory rule?

Mr. LACY. Well, Senator, if I can for purposes of clarification make the point that the Commission has authorized a section 12 action. That is the policy of the Consumer Product Safety Commission. So the steps have been taken.

Senator McCAIN. How long will it take, Mr. Lacy, if you want to answer that?

Mr. LACY. Well, we are awaiting a decision from the Department of Justice, where we have sent a referral letter on February 2 to determine if the Civil Litigation Division will represent the agency.

Senator McCAIN. I am asking about the rule, Mr. Lacy, not about the enforcement action.

Mr. LACY. The rulemaking procedure could take three or four years.

Senator GORE. Would you yield just briefly?

Senator McCAIN. I would be glad to yield.

Senator GORE. On the referral to the Justice Department, under the statute there is a 45-day period for the Department of Justice to enforce the action, and at the end of that 45-day period the CPSC has the authority to bring the action itself.

This has been taken under the imminent hazard authority of section 12, and after the 45 day period elapsed the CPSC then had the authority to move quickly and alleviate this imminent hazard. And

yet, it is my understanding that the CPSC has failed to do that, notwithstanding the fact that the 45 day period has lapsed.

And I thank my colleague for yielding.

Mr. LACY. Could I take one minute to give a thorqugh legal response to your statement? Senator, with all due respect, your interpretation of section 27 and my interpretation of section 27 are at odds.

What section 27 does is create an optional power in the Consumer Product Safety Commission to act in its own capacity after a 45 day period has elapsed. While we are waiting for the Department of Justice to make a decision on whether or not they will represent us, that 45 day period has lapsed and we now have the opportunity to pick up the case on our own if we wish.

The fact of the matter, however, Senator, is that this is an extremely complex case. There is a 14,000 page record in connection with it. It certainly is to the advantage of consumers, in our determination, to have the Civil Litigation Division of the U.S. Department of Justice represent the Commission in this case, rather than being left to our own devices in the Office of General Counsel at the CPSC.

If we need to, that is a determination for the Commissioners to make in the event that the Justice Department declines to represent us. We have no indication as of today that the Department of Justice will not represent us.

We think that it is in the interest of the taxpayers and in the interest of the consumers that the case be well prepared and thoroughly reviewed prior to the filing of any papers. And this is what is ongoing today at the Department of Justice, and we are confident we will have a decision soon.

We have no indication from them when, but we are confident that we will hear from them soon.

Senator GORE. Well, this will not come out of my colleague's time, but briefly, in response to your legal response—which was more factual than legal—as I understand your statement, our interpretations are the same. But is there a section 27. Aren't you referring to section 16 which does refer to optional power.

Just as my statement pointed out, the statute says that if the Attorney General fails within 45 days to intervene then the Commission may commence to defend or intervene and supervise the litigation of such action and the appeal of such action in its own name, by any of its attorneys designated by and for such purpose.

So if in fact the power exists and if in fact the Commission has decided it is an imminent hazard and if in fact 20 people are dying each month, and if the Justice Department fails to respond, the Commission does have the authority to go forward.

If you have reason to believe the Justice Department is going to respond imminently, of course, that puts a different face on it. I have no such indication.

I appreciate the patience of my colleague.

Mr. LACY. Senator, I hate to be put in the position of correcting you, but your statutory reference is wrong. There is a section 27. I have—of the Consumer Product Safety Act, which is the Act under which we are proceeding under section 12. And you can find the

reference that I am referring to at section 27(b), section (7), subsection (a).

Senator GORE. Well, since I corrected you you have every right to correct me. We are working from different copies of it evidently. But in my copy of it I was provided by the subcommittee, we have section 16. But we can seek to resolve that.

In any event, it is a discretionary authority. The CPSC does have the right to move. The CPSC has not acted.

Senator MCCAIN. Thank you, Mr. Chairman.

Let me just say that, if it is correct that it takes three to four years to enact a mandatory rule, it seems to me that we have got to repair the system to some degree. The fact is that since 1982 we have had almost 700 deaths, 290,000 injuries, and, perhaps more importantly than that, the majority of those accidents and deaths have occurred in the last four years. It appears to me that we are in a situation where we are going to see a whole lot more accidents and needless deaths while we are waiting for this rule to be enacted.

And I know one of your responses is going to be, Chairman Scanlon, that we can enact a voluntary standard, and I hope so.

Mr. SCANLON. I agree, Senator. And as frustrated as I am with the progress to date with the voluntary standard, I want to point out that, at the same time we have been working and sending staff to the voluntary standards meetings, we did begin a rulemaking progress because of the seriousness of this hazard.

Senator MCCAIN. But I am not sure that we can wait three or four years to get it done.

Mr. SCANLON. Unfortunately, the process works that way. The lawnmower, the infamous CPSC lawnmower standard, took seven years.

Senator GORE. If I could ask you to hold that response, we will give you a full opportunity to say that. We do have a vote on. The bells rang without us realizing, and we only have three or four minutes to get over to the Capitol. We will come back in about ten minutes, so we will reconvene at 10:30.

[Recess.]

Senator GORE. The hearing will come back to order.

I have good news and bad news. The bad news is that there are going to be a series of votes, back to back, one right after another, for the next two hours.

The good news is, we are going to plow forward, with short interruptions, for those votes.

I am not sure which is good and which is bad in the news department there. We considered rescheduling the hearing for another day. But we have had a lot of witnesses who have gone to great difficulty to be here.

What this will mean is that we will attempt to shorten the procedure somewhat, and rely on statements inserted into the record as much as possible.

And I apologize. Sometimes the Senate gets into one of these situations where a procedural battle mandates a whole series of moves, one right after the other, with record votes. And there is nothing that can be done about it.

At any rate, please forgive the inconvenience, but we are going to try to finish in spite of the difficulties, and I will lose a little weight running back and forth.

Let me pick up some of the statements and questions that we were talking about before.

Mr. Scanlon, do you not think that if the CPSC had moved forward beyond a mere notice of rulemaking and sent a clear signal of your intent to go forward with a mandatory proceeding, that the industry would have responded with a better voluntary standard?

Mr. SCANLON. Senator, again, I would say that we did move forward by publishing an ANPR on May 31, 1985. Again, in December 18, 1986, we voted for a notice to proceed with rulemaking.

So we have begun that process.

Senator GORE. Let me restate the question if I could, because you may not have heard it.

The question is: Do you not think if the CPSC had moved forward beyond the notice of rulemaking, and sent a clear signal of your intent to go forward with a mandatory proceeding, that the industry would have responded with a better voluntary standard?

Mr. SCANLON. With the notice to proceed with rulemaking, we were doing what was to be obtained in phase one of the voluntary standard, namely, training, warning and labelling.

Senator, we were doing that.

Senator GORE. Well, let me try again.

If you had done more than that, if you had gone beyond a mere notice of rulemaking, and moved quickly to more affirmative steps, sending a clear signal of your intent to go forward with a mandatory proceeding, do you think that would have resulted in a better voluntary standard?

Mr. SCANLON. Senator, during the 18-month period, there were a number of items that had to be addressed for the Commission to make its case.

We had to have epidemiological studies. We had to have a myriad of engineering analyses, and stability test. I can go on and on with respect to the various things we had to do.

This was all part of the published 12,000 page report released on September 30, 1986. All this was necessary in order to make the case that I think you want to be made.

Senator GORE. Well, let me try again. I do not want to beat it into the ground, but I do not think you are responding to the question, with all due respect.

If you had gone beyond a mere notice of rulemaking, and given a clear intent, a clear signal of your intent to seek mandatory action, do you think the industry might have responded with a better voluntary standard?

Mr. SCANLON. I do not think so, because I do not know of any other notice we could have given other than what we did.

Senator GORE. You could have filed under Section 12, the imminent hazardous article.

Mr. SCANLON. We did, Senator, but we had——

Senator GORE. No, not for two years, and you have not followed up on that yet, by enforcing it.

Mr. SCANLON. We had to make the case. We did not have the data in either 1985 or early 1986, to make a case for an imminent hazard.

Senator GORE. Well, there is substantial disagreement about that, and people of course will differ about what kind of evidence you need to justify proceeding, the kind of evidence available at that time led a great many people to believe the CPSC should have gone forward.

The kind of evidence available now has convinced even your colleagues at the CPSC to move forward, but you are still not convinced that you ought to move forward with a mandatory action.

So your assertion that the evidence would not sustain the action, I think, should be called into question.

Mr. SCANLON. Senator, I favored a Section 12 imminent hazard action. I favored the warning, notice and training provisions under Section 12.

Senator GORE. I thought you said in your own statement that you dissented?

Mr. SCANLON. I did, and if you will permit me to finish the sentence, I can explain this to you.

Senator GORE. Surely. Go ahead.

Mr. SCANLON. I disagreed with the remedies that were voted on that were part of the motion. That is why I voted against the action.

Senator GORE. You mean, to have a mandatory action?

Mr. SCANLON. It was not because it was mandatory. And because this is now at Justice, and we are waiting for a decision, I am not comfortable in providing all this publicly, but I would be delighted to do it one-on-one.

Senator GORE. Well, in your situation, I would not feel comfortable with what has happened either, but perhaps for different reasons.

The reliance on voluntary action, it seems to me, is just not justified when you have this kind of record.

It is my understanding that Congress amended the 1981 Act not to result in weaker voluntary standard efforts but to spur strong and quick voluntary actions.

The Congress intended that the CPSC use its mandatory standard authority as a stick, if necessary. And this Commission has been unwilling to use that stick.

If you knew in 1984, when this first came to the CPSC's attention, that in 1987 there would be 700 deaths and over 300,000 injuries, if you had known that at the time, would you then have urged stronger action?

Mr. SCANLON. Yes.

Senator GORE. Good. Good. We're making progress.

When will the Justice Department determine whether to pursue the ATV enforcement action?

Mr. SCANLON. I was advised by the Assistant Attorney General for the Civil Division on Friday of last week that it would be in a few weeks.

Senator GORE. A few weeks? Is the CPSC encouraging Justice to undertake this enforcement action?

Mr. SCANLON. Yes.

Senator GORE. What is the CPSC's contingency plan in the event the Justice Department elects not to pursue the Section 12 enforcement proceeding?

Mr. SCANLON. We will have a meeting as soon as that decision is made, if the Justice Department decides not to take the case, to determine what we are going to do.

We are now, I might say, Senator, looking at what resources will be needed in our legal area, in our engineering and other directorates within the Commission.

Senator GORE. Now, you used the figure earlier, for 4½ years to get action with a mandatory proceeding. Were you referring to Section 7 actions?

Mr. SCANLON. I was referring to the average time to promulgate a mandatory standard in the——

Senator GORE. Under Section 7?

Mr. SCANLON. Yes.

Senator GORE. Okay, so proceeding under Section 12 with the imminent hazard authority, which is a rarer way to proceed, would not carry with it the expectation of a 4½ year delay, would it?

Mr. SCANLON. I do not think so.

Senator GORE. So your argument earlier that it might have been 4½ years in any event really does not apply to the option of taking a Section 12 action?

Mr. SCANLON. That was for the notice to proceed with rulemaking.

Senator GORE. I understand. But your argument earlier was that the voluntary approach, in your view, was superior partly because a mandatory action would take just as long.

And yet the evidence does not indicate that a Section 12 action would take as long. When you have an imminent hazard, you have the authority to go straight into court, request that DOJ do it, and then, after 45 days, do it immediately yourself.

It would still be litigation, but the delay is not as significant—at least, the evidence would not support a contention that the delay would be that long.

Why have so many Commission meetings been cancelled or postponed?

Mr. LACY. Senator, if I may respond——

Senator GORE. Excuse me, Mr. Lacy. We are operating under real time constraints here, and I would like to get an answer to the question that is asked.

Mr. SCANLON. Last summer, Senator, I had back surgery, and I was instructed by my surgeon to lay flat for some 30 days following the operation.

I came back to the Commission too soon. I then had a reoccurrence, a flareup, and I again was flat for another 30 days.

There is another reason that some meetings were missed. I think, in the last month, there were two meetings of the Commission missed because one of each of my colleagues was sick. And, some seven months ago, I think three meetings were missed during a dispute over an internal governance policy issue.

Senator GORE. The cost-benefit analysis?

Mr. SCANLON. No, these were internal.

Senator GORE. What about the meeting scheduled on the cost-benefit approach that was cancelled? Did that have to do with a health problem, or was it related to the likelihood of a particular point of view carrying the day?

Mr. SCANLON. I will defer to Commissioner Graham on that. I think she scheduled that for next month.

Ms. GRAHAM. There was one last winter, Mr. Chairman. I do not recall the reason why that one was cancelled. We do have it on the agenda for early June now.

Senator GORE. Well, good. The record indicates that there have been lots and lots of meetings cancelled or postponed.

I might say that I appreciate the suggestion earlier on the question of a quorum—due to the unusual circumstances we have now with the makeup of the Commission, it may be that that is a part of it as well.

What is the status of the general policy proposal placed on the agenda several times in November and December of last year by Commissioners Graham and Dawson? Do either of you wish to respond?

Ms. DAWSON. I do not recall the exact date, but some weeks ago we did resolve that issue. We did have a meeting eventually, and we did adopt a general policy. To some degree it addresses some of the concerns that Commissioner Graham and I have had about responsiveness of key staff people and other issues relating to management, and to the work of the staff in providing information to the Commissioners.

We will continue to see how that works, Senator.

Senator GORE. Okay. What about this business of applying cost-benefit analysis to voluntary recalls proposed by manufacturers who discover a product is hazardous? Can you clear that up briefly, Mr. Scanlon?

Are you really proposing to apply the agency's cost-benefit analysis to voluntary recalls proposed by manufacturers?

Mr. SCANLON. Senator, we have on file the costs of injuries, the number of products and so forth. It takes approximately five hours of an economist's time to do the analysis, the cost-benefit analysis, with the information that is already in the file.

One thing I would stress is that this is one of many reports which is part of a briefing package.

Senator GORE. What is the purpose of it? To convince a manufacturer to abandon a voluntary recall?

Mr. SCANLON. Not at all. It is to provide the Commissioner who will be voting on an item to have the most information available to him or her.

Senator GORE. Well, in order to analyze the prospect of a no vote against a voluntary recall proposed by a manufacturer proposed on its own product?

Mr. SCANLON. Not at all. I can cite the *Johnson & Johnson* case late in calendar year 1986, where the costs were not significant, but there were two deaths related to a crib toy, and the Commission voted for that.

Senator GORE. Do you have resources to burn over there?

Mr. SCANLON. We do not.

Senator GORE. Are you sort of strapped for resources?

Mr. SCANLON. We are.

Senator GORE. Do you think it makes sense to put your people to work analyzing the cost-benefit of a voluntary recall proposed by a manufacturer?

Mr. SCANLON. As I said before, we have all that information on file, and I don't think five hours of an economist's time to complete the work is extravagant.

Senator GORE. Well, with all due respect, I think it is kind of silly.

Ms. GRAHAM. Mr. Chairman, may I go on record? I am opposed to applying cost-benefit to our compliance issues. And I base that on the fact that neither the law nor the legislative history supports a cost-benefit analysis.

I am going to try to bring that up at the briefing on cost-benefit analysis in June.

Senator GORE. Well, I applaud your view of it, and I agree with it. And I think it is ridiculous to tie up very scarce resources at the Commission to analyze the costs and benefits of a voluntary recall proposed by a manufacturer who determines that his or her product is hazardous and needs to be recalled.

To have the Consumer Product Safety Commission waste its resources on a lengthy and questionable analysis of that type seems to me to be ridiculous.

[The following information was subsequently received for the record:]

QUESTIONS SUBMITTED BY THE CHAIRMAN

Question 1. The domestic textile/apparel industry has provided the CPSC with numerous examples of imported 100 percent cotton apparel items that fail to meet CPSC flammability standards, when the garment has been "fleeced" or "napped" to make it more comfortable. Why has the CPSC failed to place a priority on the flammability problem that exists in this area?

Answer. Although not specifically identified by the Commission as a priority matter, the compliance staff has actively investigated the five trade complaints received during the past two years regarding 100 percent cotton "fleeced" or "napped" apparel. Two firms were found to be selling sweatshirts that failed to comply with the Standard for the Flammability of Clothing Textiles (16 CFR 1610). Both firms have initiated corrective action. Investigations at two other firms are ongoing. The garments brought to our attention by the fifth complaint met the requirements of the clothing textile standard.

In addition to the activities just described, the staff has initiated two marketplace surveillance efforts during the past two years on 100 percent cotton "fleeced" or "napped" apparel. A description of these efforts follows:

(1) In the fall of 1985, the field staff visited approximately 200 retails stores nationwide to examine the "fleeced" or "napped" apparel being offered for sale. At that time, six potentially noncomplying garment styles were sampled for testing by the Commission. Four of the garment styles failed to comply with the mandatory flammability standards. Voluntary corrective action was requested and initiated.

(2) In the fall of 1986, the field staff visited retail stores (approximately 50) nationwide looking for potentially noncomplying "fleeced" or "napped" apparel. This time, garment styles were sampled for testing by the Commission, four which failed to comply with the mandatory flammability standard. Once again, voluntary corrective action was requested and initiated.

These two voluntary corrective actions included a stop sale by the manufacturer or importer, notice and recall to the retail level and/or notice and recall to the consumer level, depending upon the extent of the failure before and after washing.

Question 2. What course of action does the CPSC plan to undertake to address this situation and notify the public and retail community of the potential hazard associated with stocking and selling imported, fleeced 100 percent cotton textile items,

since many foreign manufacturers are unaware of or neglect flammability standards?

Answer. In May 1986, an information letter was mailed by the compliance staff to approximately 200 manufacturers, importers and retailers believed to be involved in the sale of "fleeced" or "napped" apparel. The letter advised the firms that if the "fleeced" or "napped" side of a fabric is the exposed fabric surface in a garment, or the garment is capable of being worn with the "fleeced" or "napped" surface exposed, the "fleeced" or "napped" side of the fabric must comply with the Standard for the Flammability of Clothing Textiles (16 CFR 1610). The letter further advised the firms that "fleeced" or "napped" fabrics, when tested for adverseness to this standard, usually comply when the fabric is a blend of untreated cotton and a synthetic fiber, such as acrylic or polyester, but frequently fail to comply when the fabric is 100 percent untreated cotton.

The provision of the flammability standard which involves garments that may be worn with the "fleeced" or "napped" inner surface exposed was issued in the late 1960's due to an observed practice of wearing athletic shirts or "sweat shirts" inside out. The CPSC staff is currently investigating the extent of this "inside out" practice as it relates to the types of apparel in the U.S. market today, many of which have unique design characteristics and/or are referred to as designer sweatshirts.

QUESTIONS SUBMITTED BY SENATOR GORE

Question 1. What is the Consumer Product Safety Commission's (CPSC) contingency plan in the event that the Justice Department elects not to pursue the CPSC's Section 12 ATV enforcement proceeding? How would this plan affect the CPSC's allocation of resources? Would the CPSC require supplemental funding to pursue the Section 12 proceeding on its own?

Answer. Early on, our Office of General Counsel made preliminary estimates of the staff and resource requirements that would be needed if we were to prosecute the case on our own. In addition, funds were set aside to enable the Commission to begin the enforcement action. However, the CPSC would have to ask Congress for either reprogramming authority or supplemental funding for the litigation support staff if we were to pursue the case alone.

Question 2. How has the fact that there are two vacancies at the CPSC affected its functioning?

Answer (Scanlon). To my way of thinking, the CPSC has continued to exercise its educational, regulatory and enforcement responsibilities in a timely and responsible manner. However, the reduction of the Commission from five to three has reinforced the tendency of the Commissioners other than the Chairman to engage in administrative micro-management without any compensating reduction in the amount of time required to make policy decisions. As a consequence, I would recommend that the Commission be converted to a single administrator independent agency beginning in Fiscal Year 1989. Failing that, I would suggest that the Commission once again be made a five member body with the Commissioners other than the Chairman serving on a per diem rather than a full time basis. Such a collegial framework would not only provide for greater diversity of viewpoint than is possible with a three member body, but would retain the cost advantage realized by reducing the size of the Commission in the first place.

Answer (Dawson). The fact that there are two vacancies at the Commission has not been without its consequences. The CPSA requires that three Commissioners constitute a quorum to do business. Last year, because the Chairman was absent from several Commission meetings that had been scheduled to discuss and vote on certain management subjects, the Commission was unable to resolve those issues for over six months.

My nearly three years at the Commission have persuaded me that this collegial body, under the terms of the Consumer Product Safety Act (CPSA), has the right and even the obligation to set forth policies governing management issues as they relate to our decisionmaking responsibilities.

We must often make decisions that affect the safety, health and the very lives of American citizens. In order to make these critical decisions with confidence, we must be sure the senior staff that provides us with information and implements our decisions is accountable to the entire collegial body. Accordingly, we owe it to the public and to Congress to set forth clear guidance to the Chairman in the areas of personnel, structure and the flow of information to guarantee such accountability.

In fact, several times in the past the Commission has exercised its prerogative under Section 4(f)(2) of the Consumer Product Safety Act to set such guidelines for the Chairman. The matters scheduled for discussion last year were in the same cate-

gory as those previous actions. Had there not been two vacancies on the Commission, the meetings could have been held even in the absence of the Chairman.

The majority of the Commission, mindful of its responsibility not to allow internal disputes to affect its ability to address safety issues, continued to attend regularly scheduled meetings on all safety issues. Ultimately, a compromise was reached on the management issues and a set of general policies was adopted. Thus far, we are not able to determine if those new policies will resolve our management problems. Nonetheless, I believe that additional legislative changes could be drafted that would improve the ability of the collegial body to oversee the functioning of key staff.

In addition, the adoption of a two-member quorum requirement, should the collegial body remain at three, is key to the survival of a meaningful consensus decision-making system.

Answer (Graham). Having two vacancies at the Commission with no change in the quorum requirement has seriously affected the functioning of the Agency.

Section 4(d) of the Consumer Product Safety Act (CPSA), anticipating a five-member Commission, states that ". . . three members of the Commission shall constitute a quorum for the transaction of business." Current appropriation language limits us to funding no more than three Commissioners, so now all three must always be present to conduct business.

If the Commission is to be limited to three members, the statute should also be changed to indicate a quorum requirement of two members rather than all three. The present quorum provision renders the other two Commissioners virtually impotent and has the practical effect of the Chairman single-handedly being able to block a majority of the Commission from taking any significant action with which he disagrees.

Last year's debate over a set of general policies proposed to enhance the accountability of the Commission staff, insure the free flow of valid information and encourage the collegial body structure Congress mandated illustrates this problem.

Because the Chairman was absent from several Commission meetings scheduled to decide what course of action to take with regard to these substantial management issues, the Commission was unable to resolve them for over six months.

The general policy debate also clearly addresses how a collegial body should interact. I believe the statute and the intent of Congress are clear. On substantive questions such as the appointment and supervision of personnel, the Commission as a body has the right, and the duty, to provide clear and precise general policy guidance to govern the actions of the Chairman. To guarantee the integrity of the collegial process at the CPSC, Congress, in its wisdom, included statutory language in Section 4(f)(2) of the CPSA to provide the necessary checks and balances of the power of the Chairman. Section 4(f)(2) of the CPSA limits the Chairman's authority by requiring him to be governed by general policies of the Commission. I believe this limitation on the Chairman's authority allows the Chairman to establish, organize or abolish any position and appoint and supervise personnel so long as the action is consistent with and contrary to any general Commission policy concerning these areas. To put it simply, the statutory language makes it clear that the Commission as a whole sets the policies and the Chairman executes them.

After over half a year, a number of general policies were approved on March 18, 1987. Commissioner Dawson and I felt the minimum required for the Commission to function properly was the policy statement we put forward in January (which was a compromise from our earlier ones). However, we concluded that with the current quorum problem, the Chairman would probably ignore any provision adopted by the Commission with which he disagreed. Thus, we ended up with the lowest common denominator in the interest of reaching temporary accord for the good of the institution.

Staff accountability still needs to be improved. They need to be accountable to the entire Commission and not just the Chairman. One way of achieving this is to give the Commission as a whole hiring authority over Section 4(g)(3) positions as well as Section 4(g)(1) of the CPSA. I also believe it would be a logical step to include majority dismissal for any individual in a senior level position which requires majority approval when he or she is appointed. Therefore, in addition to changing the quorum requirement, I believe the statutory changes mentioned above should be made to ensure that the CPSC will function in the collegial manner Congress mandated.

Question 3. How many voluntary standard activities is the CPSC staff involved in and what percentage of the CPSC budget is devoted to such activities?

Answer. The Commission is currently participating in or monitoring the development of approximately 39 voluntary standards. As shown in the table below, voluntary standards activities account for 16 percent of the Commission's total budget:

Hazard program costs of voluntary standards work:	*Thousands*
Fire/household	$1,445
Electrical/mechanical/children's	2,270
Chemical	673
Subtotal	4,388
Laboratory support for voluntary standards work	155
Voluntary standards coordination	84
Program administration and management support	905
Total	5,532
Total 1987 budget	34,596
Percent of budget	16

Question 4. How many women and minorities occupy management positions at the CPSC? What are their civil service grades and how does that compare with 1980?

Answer. As of June 1987, 13 minorities and 17 women were serving in managerial positions (GS 13-15) at the Consumer Product Safety Commission. Also, two of the three Commissioners and three Commissioner's Special Assistants are women.

Since data for 1980 does not distinguish between managerial and non-managerial personnel, it is difficult to make comparisons with 1987. However, the data does indicate that there were 31 minorities and 46 women in grades GS-13 through SES in 1980 compared to 24 minorities and 36 women in grades GS-13 through SES in 1987. But any assessment of that comparison should take into account the fact that employment at the CPSC has declined approximately 46 percent since 1980.

Question 5. What is the CPSC's backlog for releasing information under the Freedom of Information Act (FOIA)? Has Section 6(b) become an excuse for non-disclosure of product-specific information?

Answer. As of May 15, 1987, the backlog of FOIA requests not completed was approximately 1,480 requests. During calendar year 1986, the Commission completed 13,548 requests, an increase of over 1,000 from the previous year.

Section 6(b) has never been interpreted or used as an excuse for the non-disclosure of product-specific information. Most non-disclosures occur because the information involved is unconfirmed or uncorroborated, and indiscriminate disclosure might conflict with the Commission's statutory obligation not to release inaccurate or misleading information. Since 1983, however, the CPSC has been asking individual consumers to confirm information in complaints they have made. Consequently, the number of denials (in part or in full) pursuant to Section 6(b) has decreased steadily since that year. In calendar year 1986, the Commission withheld materials under Section 6(b) from only 271 requests.

Question 6. Does the CPSC agree with estimates that the societal costs associated with ATV injuries range as high as $1.5 billion?

Answer. In September, 1986, the Directorate for Economic Analysis estimated the costs of ATV-related injuries and deaths for 1985. Based on the Commission's Injury Cost Model, emergency room treated injuries cost consumers about $144 million exclusive of pain and suffering, and about $421 million including the pain and suffering component. In addition, although the Commission has no precise figures, other medically attended injuries (such as those treated in physicians' offices) could have cost consumers on the order of about $400 million in 1985. There were also at least 245 ATV-related deaths in 1985. The Commission does not ascribe a value to life but, for illustrative purposes, a cost of $1,000,000 was assigned to each of the lost lives, the total cost of ATV-related deaths would approximate $245 million in 1985.

Under the above assumptions, all of which were included in the Commission's ATV Task Force Report, the total costs of ATV-related deaths and emergency room treated injuries in 1985 may have run in the neighborhood of $660 million. If other medically attended injuries are included in the calculation, the total costs of ATV-related deaths and injuries could have approximated $1 billion in 1985, and, of course, if higher values of life are assumed, the total costs were well in excess of $1 billion.

While these costs are high, they are in the same range as those for snowmobiles, higher than those for off-road motorcycles and lower than those for on-road motor-

cycles. Furthermore, for each of these vehicles there are societal benefits which could be enumerated.

Question 7. What is the status of any negotiations with Justice Department representatives or ATV manufacturers concerning the Section 12 enforcement proceeding? Who represents the CPSC during such negotiations?

Answer.

[NOTE: In order to protect the integrity of Commission procedures in this regard, the response to this question would be treated as Restricted information.]

The Commission has requested DOJ to represent it in the Section 12 case. Commission and DOJ attorneys are working together in preparing a case; however, no decision has been made by DOJ about actually filing the complaint.

No negotiations with industry have occurred at this time, either by DOJ attorneys or by CPSC staff attorneys.

CPSC and DOJ attorneys met in May, 1987 with industry attorneys, who expressed their views on various legal issues surrounding the case and expressed a desire to discuss a possible settlement. However, CPSC attorneys are continuing to work on preparing to file a complaint. If and when the Commission does begin negotiations, CPSC staff attorneys expect to work closely with DOJ's litigation team.

Question 8. How do ATV injury and death statistics compare to injury and death statistics for other consumer products?

Answer (Scanlon). We have some preliminary information on the relative use of other recreational vehicles and motorcycles. Based on the estimated annual use of ATVs, there have been approximately 142.7 emergency room treated (ERT) injuries per million hours of use and about 0.41 deaths per million hours of use. For off-highway motorcycles, the figures are 94.6 ERT injuries and 0.06 deaths per million hours of use. For snowmobiles, there have been roughly 67.1 ERT injuries and 0.91 deaths per million hours of use. The relative use of on-highway motorcycles is more difficult to estimate, but based on some assumptions, there may have been about 119.3 ERT injuries and 2.85 deaths per million hours of use.

Thus, taking into account relative use, the risk of injury on an ATV may be about 1.5 times greater than that for a trailbike, about 2.1 times greater than that for a snowmobile and about 1.2 times greater than that for an on-highway motorcycle. With respect to the risk of death, for an ATV it is 7 times higher than that for an off-highway motorcycle. However, the risk of death on a snowmobile may be about twice that on an ATV and the risk of death on an on-highway motorcycle may be about 7 times the risk of death on an ATV for a common unit of use.

At this point, it should be noted that the snowmobile death estimates are based on adjustments to death certificate data available to the Commission. A detailed survey of how consumers use snowmobiles, trailbikes and ATVs would have provided additional information but the Commission voted in August, 1985 (by a 3-1 margin with Chairman Scanlon dissenting) not to conduct such a survey. Hence, these findings are based upon the best information available.

Based on this information, we can also estimate the costs of these deaths and emergency room treated injuries, for a common unit of vehicle usage, using the CPSC's Injury Cost Model and arbitrarily assigning a cost of $1,500,000 for each death (the Commission does not endorse any value of life). When this is done, for every 1,000 hours of vehicle use, the total cost of vehicle-related injuries and deaths may amount to roughly $1,310 for ATVs, approximately $460 for off-highway motorcycles, around $1,670 for snowmobiles and in the neighborhood of $4,820 for on-highway motorcycles.

Answer (Dawson). As I understand the nature of this question, what is desired is an assessment of ATV death and injury statistics compared to those of other consumer products in general, not just a comparison of ATVs to other recreational vehicles.

In terms of numbers of deaths and injuries associated with a consumer product, the statistics compiled by the Commission staff with regard to ATVs are extremely high. Of course, it is not always possible to assess relative risks based strictly on numbers. Other products under the Commission's jurisdiction, i.e., bicycles, skateboards, stair steps, and ladders, for example, also show a high number of Emergency Room Treated injuries, according to NEISS statistics. But the Commission has to take into consideration other factors, such as the relative severity of the injuries (including the frequency with which such products are related to actual deaths), and how the products are marketed to the consuming public. Another factor which must be considered is whether or not there is a possibility that Agency action could effectively reduce the numbers of injuries.

In cases considered during my tenure where the Commission undertook either the commitment of large resources or other corrective action, I know of no other prod-

uct where the numbers of deaths and injuries was or is as high as that for ATVs. For example, in 1985 the Commission undertook extensive action with regard to expandable babygates, when the deaths involved were much fewer in number (four deaths over a four year period and an estimated 600 injuries annually). In another Commission action, a large manufacturer, as the result of a consent agreement with the Commission, offered consumers a refund for all of a certain type of crib toy, at an estimated cost of over $500,000.00. In that case the Commission had information about only two deaths that were associated with the product.

Another example is riding lawn mowers, a Commission priority for the past three years and for which the Commission has expended large amounts of time and money. These products are associated with an estimated 75 deaths per year and an estimated 18,000 Emergency Room Treated injuries annually. (In the case of ATV deaths, I wish to emphasize that the 696 deaths from 1982–1986 are known documented deaths as opposed to estimates such as is the case with the riding mower figure.)

With each individual class of products, the Commission judges not only the severity of the injuries, but the number of products in use, and the vulnerability of the population at risk. Ultimately, the Commission must also address whether or not there is reason to believe that Agency action could bring about a reduction in those injuries. For all of the above reasons, I believe the Commission, under its Congressional mandate, had no choice but to address the ATV issue and take strong action to bring about a remedy to protect the public.

Answer (Graham). I concur with the answer of Commissioner Dawson. ATVs present the most serious safety problem I have encountered during my term at CPSC. As Commissioner Dawson points out it is not always possible to assess relative risks based strictly on statistics. Based on the unacceptably high number of death and injury figures associated with ATVs, especially to children under 16 years of age, this is a product which is deserving of immediate attention by CPSC.

Question 9. Why has the CPSC failed to investigate the actual cause of ATV deaths?

Answer. The CPSC has extensively investigated possible causes of ATV-related deaths. In no less than 250 cases, in-depth reviews were done of such deaths after they were reported to the Commission. Furthermore, information on all cases reported to the Commission is always included if an ATV accident is listed on the death certificate. This helps to keep all the cases in perspective.

Often, it is not possible to identify a single cause in accidents of this type. All this information notwithstanding, there was insufficient data to assess the causal role of the ATV in 63.6 percent of the 250 cases reviewed. Usually, the "cause" is the result of several interactions involving the ATV, the rider and the environment in which the ATV is being ridden.

Sufficient data has been obtained, however, for the Commission staff to compute the risk of death by vehicle type, engine size, type of suspension, model year, driver age, driver sex, carrying of passengers and use on paved roads. Further analysis, done under contract, showed that poor driving judgment was a major contributing factor in fatal accident causation (in 29.6 percent of the 250 cases), along with excessive speed (29.6%), poor operating proficiency of the driver (25.6%), and alcohol consumption (21.2%). Usually two or more of these factors combined to play a role. Also, in 28.8 percent of the 250 fatal accident cases reviewed, the vehicle was adjudged by analysts as not being a causal factor. In only 7.2 percent was it judged that vehicle instability or component malfunction was a causal factor.

Question 10. What has the CPSC done to encourage states to pass ATV safety legislation?

Answer. First, as part of its 18 month study of ATVs, the Commission's ATV Task Force reviewed State legislation dealing with recreational vehicles in general and ATVs in particular. Its findings, which were that less than half of the States had adopted legislation or regulatons dealing with ATVs, were subsequently included in the Commission's September, 1986 ATV Task Force Report.

In November, 1986, following release of that Report, the Commission held a conference for its State designees in Louisville, Kentucky during which ATVs were extensively discussed. Greater Federal-State cooperation on ATVs and other product safety issues has been the result. In addition, the Commission sent a letter (on January 28, 1987) to all Governors stressing the importance of ATV safety. Information was provided on injury and death data, the unique handling characteristics of ATVs, minimum age recommendations, the virtues of wearing helmets and protective clothing and the importance of not consuming alcohol, riding with a passenger or riding on paved roads.

Also, the CPSC has shared ATV safety information with a Model State ATV Legislation Committee (composed of representatives from Kentucky, California, Tennessee, and Connecticut) formed to develop draft model State legislation. The committee reviewed and considered the California ATV Act, the Pennsylvania ATV Act and the Specialty Vehicle Institute of America's suggested model state statute in the process of drafting its proposed Model Act. This proposed Model State ATV Act was then sent to the CPSC's State Designees on May 15, 1987.

Question 11. Identify all regulatory action taken by CPSC affecting indoor air quality since FY 1980. For each action, provide a chronology of steps taken.

Answer. The Commission has taken a number of regulatory actions affecting indoor air quality since FY 1980. As the following chronology indicates, these involved benzene, asbestos, urea formaldehyde foam insulation, unvented gas space heaters and other products that were, or are, used inside the home.

A. Benzene

1976-1987.—Evaluated health effects of exposure of benzene. Concluded it caused leukemia.

May 19, 1987.—Proposed rule to ban products containing 0.1% or more benzene.

May 22, 1981.—Withdrew proposed rule on benzene since most products containing benzene had been removed from marketplace and the remaining products were determined not to pose an unreasonable risk.

B. Asbestos

1977.—Issued a ban on asbestos-containing patching compounds and artificial emberizing materials.

1979.—Initiated asbestos fiber release testing on asbestos millboard, paper and other products.

1979-1980.—Negotiated a voluntary agreement with numerous manufacturers to cease using asbestos in hair dryers.

1979-1986.—Encouraged the voluntary withdrawal, from the retail market, of products which contained releasable asbestos.

1982.—Co-authored, with EPA, a booklet entitled "Asbestos-in-the-Home."

Fall, 1986.—Issued an enforcement policy requiring warning labeling and use instructions on all remaining asbestos-containing consumer products.

C. Urea formaldehyde foam insulation

Oct. 1976.—The CPSC was petitioned to develop a safety standard for certain types of home insulation products, including urea formaldehyde foam insulation (UFFI).

Dec. 1979-Feb. 1980.—Held public hearings.

Apr. 1980.—Conducted a technical workshop at the National Bureau of Standards.

June 10, 1980.—Proposed a rule to require information disclosure to potential purchasers warning of potential abverse health effects of UFFI.

Feb. 5, 1981.—Proposed ban on UFFI based on projected risk and the absence of a feasible standard that would adequately reduce that risk.

Aug. 2, 1982.—Issued a ban on UFFI.

Aug. 25, 1983.—Ban set aside by Fifth Circuit Court of Appeals.

Sept. 1983.—Authorized creation of Chronic Hazard Advisory Panel (CHAP) to consider chronic hazards associated with exposure to formaldehyde from UFFI and other cosnumer products.

Nov. 1986.—Voted not to convene a CHAP on formaldehyde.

D. Formaldehyde in pressed wood products

(1) In 1981, the Commission initiated work to evaluate industry formaldehyde measurement procedures in manufacturing plants for quality control purposes. Also, the CPSC staff developed a plan to assess consumer exposure to, and risk from, formaldehyde released from pressed wood products manufactured with urea-formaldehyde (U.F.) resin.

(2) In 1982, the CPSC received a petition from the Consumer Federation of America requesting a mandatory rule to limit formaldehyde emissions from pressed wood to 0.05 ppm.

(3) Between 1982 and 1984, the Commission sponsored extensive laboratory testing of various pressed wood products at the Oak Ridge National Laboratory. The purpose of the testing was to determine pressed wood's formaldehyde emission characteristics under a variety of environmental conditions. From this work, mathematical models were developed which allowed the Commission to predict the formaldehyde concentration in homes. During this same period, work also was conducted on im-

proved means for measuring formaldehyde at low concentratons using standardized methods.

(4) Between 1984 and 1985, the CPSC sponsored laboratory testing at the National Bureau of Standards to validate the mathematical models that had been developed by Oak Ridge National Laboratory. After being validated, the models were used along with information from the National Association of Home Builders Research Foundation to estimate consumer exposure and risk from the formaldehyde released by pressed wood products used in conventional home construction.

(5) In 1986, the staff completed its cancer risk assessment on formaldehyde in pressed wood products found in newly constructed conventional homes. Based on this assessment, the Commission denied (on November 6, 1986) the petition by the Consumer Federation of America, but directed the staff to continue to work with the industry to develop adequate national consensus voluntary standards to limit formaldehyde emissions from pressed wood.

(6) In 1987, staff engaged in discussions with the pressed wood industry over development of a national consensus standard for pressed wood products and the feasibility of a graded standard based on the emission potential of those products. The discussions are continuing.

E. Unvented gas space heaters (UVGSH's)

1974.—CPSC petitioned to develop a mandatory standard for all space heaters to address alleged carbon monoxide poisoning hazard.

1975.—Denied petition except for unvented gas space heaters (UVGSH's).

1978.—Proposed ban on UVGSH's.

1979.—Withdrew ban in light of a new technical development: the oxygen depletion sensor (ODS).

1980.—Proposed standard requiring that UVGSH's be equipped with ODS devices.

1982.—Promulgated the standard.

1983.—Withdrew the mandatory standard in order to defer to a voluntary standard.

F. Methylene chloride

1976.—The CPSC wsa petitioned to require special labeling of products containing methylene chloride (DCM) due to an alleged carbon monoxide hazard.

1976.—Conducted exposure study on methylene chloride at an Edgewood Arsenal (MD) laboratory.

1978.—Granted petition for special labeling.

1979.—Referred petition labeling issue to Toxicological Advisory Board (TAB).

1981.—The TAB recommended that the petition be denied but that product carry several warning phrases.

1981.—Deferred decision on labeling pending the results of several animal bioassays.

Late 1983.—Gavage bioassay terminated by the NTP due to procedural flaws.

Spring 1985.—Inhalation bioassay is completed by the NTP, finds clear evidence of carcinogenicity in mice and female rats and some evidence of carcinogenicity in male rats.

June 1985.—Staff presents briefing package on DCM, including an individual risk assessment, to the Commission.

Feb. 27, 1986.—The CPSC decides to conduct formal rulemaking under Section 3(a) of the Federal Hazardous Substances Act.

Aug. 20, 1986.—Proposed Rule published in Federal Register.

Oct. 20, 1986.—Comment period on Federal Register notice ends.

June 25, 1987.—Commission briefed by staff on comments to proposed rule, modified risk assessment.

July 30, 1987.—Decision meeting on DCM scheduled.

G. Perchloroethylene (PERC)

1981.—In cooperation with the Environmental Protection Agency, assessed exposure levels inside coin-operated laundries with dry cleaning machines on the premises.

1981.—Deferred further action on PERC pending results of on-going NTP inhalation bioassay.

1986.—Staff presented status report on perchloroethylene which analyzed the 1985 NTP bioassay and limited consumer exposure data. Report concluded that PERC was a "sufficient evidence animal carcinogen" and estimated the increased risk of cancer to consumers from (1) use of coin-operated laundries containing dry cleaning machines and (2) indoor air exposure through dry cleaned clothes brought into the home.

Question 12. How does CPSC intend to allocate indoor air quality resources by project during FY '88?

Answer. In FY '88 the CPSC staff will be:

(1) Evaluating data from indoor air quality (IAQ) studies funded in previous years, developing recommendations for remedial action and continuing to coordinate IAQ efforts through the Interagency Committee on Indoor Air Quality (CIAQ). Resource projections: $93,000 and 1.5 Full Time Equivalent Staff Positions (FTEs).

(2) Conducting additional laboratory chamber studies of consumer products identified as contributors of airborne biological pollutants to determine effective strategies for reducing consumer exposure. Also, developing consumer information and guidelines for use of products to minimize exposure. These messages will be targeted towards particularly susceptible populations. Resource projections: $282,000, 3.5 FTEs and 70,000 contract dollars.

(3) Implementing Commission decisions on methylene chloride and developing appropriate remedial strategies to reduce consumer exposure to perchloroethylene. Resource projections: $132,000 and 2.1 FTEs.

(4) Developing model certification guidelines for asbestos removal or repair in the home; also, developing and distributing advice to home owners on what actions to take and avoid if they have deteriorating asbestos in their homes. Resource projections: $95,000 and 1.5 FTEs.

Question 13. Now that indoor air quality has been voted a CPSC priority project for FY 1989, what does CPSC intend to do and how much staff time and contract dollars does the CPSC intend to devote to this priority?

Answer. By 1989, the CPSC will have gained sufficient knowledge and technical information from prior years' projects on combustion appliances, allergens and pathogens, solvents, volatile organics, respirable fibers and polynuclear aromatic hydrocarbons to provide advice to consumers on dealing with indoor air problems. Using this information, two guidance documents will be developed. The first will provide suggestions to consumers for decreasing indoor air pollution exposures from consumer products while the second will be a reference manual for contractors and consumers on how to deal with asbestos in the home.

Also, in fiscal 1989, the Commission will continue to monitor and support ongoing research so as to further understand the nature and magnitude of the health problems posed by individual indoor air pollutants and pollutant mixtures. In addition, the CPSC will continue to monitor voluntary standards activities designed to promote improved indoor air quality. The resources currently allocated for this priority project are 5.8 FTEs and $200,000 contract dollars for a total costs of $558,000.

Question 14. What has the CPSC done to identify and evaluate consumer product sources of organic pollutants, some of which are already known carcinogens?

Answer. The CPSC has undertaken a variety of initiatives to identify and evaluate sources of organic pollutants from consumer products. Specifically, the Commission has:

(1) Evaluated a number of specific products expected to release organic pollutants which have been identified as potential carcinogens in both field and laboratory studies. These products have included polyvinyl chloride plastics (DEHP), pressed wood products (formaldehyde) and paint strippers (methylene chloride).

(2) Conducted chamber studies to determine levels of pollutants released from the pressed wood products, paint strippers and aerosol spray paint.

(3) Developed modeling capabilities to predict consumer exposure to these pollutants and calculated risk assessments based upon these predictions.

(4) Conducted field studies monitoring levels of volatile organic chemicals in a total of 100 homes to date. Thirty to forty specific organic pollutants have been identified in indoor air at concentrations (higher than those found outdoors) which may cause adverse health effects.

Question 15. Why, in light of the known cancer risk presented by asbestos, has the CPSC failed to take regulatory action to ban all consumer products containing asbestos? Why has the CPSC chosen to wait a possible ten years for such a ban?

Answer. The Commission's efforts to negotiate voluntary withdrawal of asbestos products from the consumer market have been very successful. Most manufacturers have ceased production of asbestos products for household use. Asbestos substitutes are available for these products and are widely used. The few manufacturers of asbestos products available for consumer use are gradually phasing out their use of asbestos. The number of asbestos products remaining under CPSC jurisdiction is small and decreasing; usage of these products is also decreasing.

The Commission has determined, however, that these products present a cancer risk. But, since there are reasonable substitutes for these products, the Commission believes that any reduction in the overall risk of asbestos exposure afforded by a

ban of consumer products would be small. The Commission's enforcement policy, (adopted last fall) requiring labeling to inform consumers about products containing asbestos, should provide additional protection against exposure.

Question 16. What has the response been on the part of each manufacturer that has been requested to exclude asbestos from household products?

Answer. Most manufacturers stopped production of asbestos products for household use in the late 1970's. For asbestos products still available for use by consumers, the number of manufacturers is small and most have agreed voluntarilly to phase out the use of asbestos in their products. Only a few firms have stated that they will continue to use asbestos. Under the Commission's enforcement policy, these remaining asbestos products must be labeled to warn consumers of any chronic health risks.

Question 17. Has the CPSC estimated the percentage of homes that contain asbestos? If so, what is the estimate? If no determination has been made, why?

Answer. The Commission's Asbestos in Homes project is designed to address the potentially widespread risk of household exposure to asbestos, particularly in older homes. Based on Census data, the CPSC estimates that up to 30% (about 25 million) of the 85 million existing households were built before 1950. Since asbestos materials were most widely used in home construction prior to 1950, the Commission believes that many of these homes contain some asbestos building or insulating materials. In 1983, the American Society of Home Inspectors conducted a survey of homes its members inspected in the Eastern United States. In this limited sample, 27% of the homes were found to contain asbestos; most of these asbestos-containing homes were 20 to 40 years old.

Question 18. What mandatory or voluntary standards are in place to limit human exposure to pressed wood products, such as particleboard, medium density fiberboard and hardwood plywood?

Answer. The U.S. Department of Housing and Urban Development (HUD) currently has requirements in their manufactured housing safety standard to limit the amount of formaldehyde that can be released from particleboard and hardwood plywood used to construct mobile homes. These standards require that particleboard not exceed a 0.3 parts per million (ppm) level and hardwood plywood not exceed a 0.2 ppm level, when tested under certain specified conditions. The HUD standard does not include medium density fiberboard (MDF).

The two principal trade associations representing manufacturers of pressed wood made with urea-formldehyde (U.F.) resin have published voluntary standards to limit formaldehyde emissions. The standards (published by the National Particleboard Association and the Hardwood Plywood Manufacturers' Association) are identical to the HUD requirement for particleboard and hardwood plywood. The National Particleboard Association also recently published a voluntary industry standard to limit the amount of formaldehyde released by MDF. Although the limit for MDF is 0.3 ppm, the test conditions under which this level has to be achieved are less stringent than those required for the other pressed wood products.

After evaluating the results of three recent studies on formaldehyde, the Commission voted (on November 6, 1986) to authorize its staff to continue working with industry on development of voluntary standards for pressed wood (reversing an earlier decision made for budgetary reasons). Discussions subsequently have been held on the development of a consensus standard (industry has indicated it is willing) and on the feasibility of incorporating a product grading system, based on formaldehyde emission potential, into that standard.

Question 19. What regulatory action has the CPSC taken on pressed wood products since 1980?

Answer. Please refer to Part D of the response to Question #11.

Question 20. Why has the CPSC pursued a voluntary standard rather than a mandatory standard for formaldehyde emissions from pressed wood products? When did the CPSC decide not to issue an Advanced Notice of Proposed Rulemaking?

Answer. The Commission decided not to issue an Advanced Notice of Proposed Rulemaking on November 6, 1986 when it denied the Consumer Federation of America's petition requesting a mandatory standard to limit formaldehyde emissions from pressed wood products. Instead, the Commission decided to pursue the use of voluntary standards to limit the release of formaldehyde from pressed wood because: (1) the industry expressed a willingness to develop standards, (2) the voluntary process is expected to take less time and resources and (3) the body of data needed to support a voluntary standard is less extensive than that required from a mandatory standard.

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Question 21. Now that the Environmental Protection Agency has identified formaldehyde as a probable human carcinogen, what action does the CPSC intend to take regarding the formaldehyde emissions from pressed wood products?

Answer. At the present time, the Commission intends to continue its efforts to encourage development of suitable national consensus voluntary standards for pressed wood products. However, if those efforts fail to produce a suitable result, the Commission may undertake development of a mandatory standard. The decision by the Environmental Protection Agency to classify formaldehyde as a probable human carcinogen does not alter the Commission's outlook since the CPSC has considered formaldehyde a potential human carcinogen from the time it acted to ban the use of urea-formaldehyde foam insulation in 1982.

Question 22. When did the CPSC first become aware of the hazards posed by formaldehyde emissions from pressed wood products?

Answer. In 1980, the Commission received some preliminary information from a laboratory, under contract to the CPSC, that was screening products containing formaldehyde to deterrmine which products had the greatest potential for formaldehyde release. Pressed wood materials were the highest emitters of the products being tested. In addition to the findings of the contractor, the Commission also was receiving consumer complaints on formaldehyde believed to be associated with pressed wood. A great many of these complaints came from residents of mobile homes in which the use of pressed wood was know to be extensive. These findings, along with increasing concern about the adverse health effects being associated with formaldehyde, led to the Commission's investigation into pressed wood products.

Question 23. What is the status of CPSC action on methylene chloride?

Answer. On August 20, 1986, the Commission published a proposed rule on methylene chloride in the Federal Register. Interested parties were given 60 days to comment and 17 comments were subsequently received. The CPSC staff then evaluated those comments and, on June 12, 1987, provided the Commission with briefing materials including analyses of the comments, an indication of options and recommendations for action. The staff then briefed the Commission verbally on June 25, 1987 and the Commission is now in the process of evaluating the staff's recommendations. A decision meeting has been scheduled for July 30, 1987.

Question 24. Have consumers been warned of the cancer risks posed by methylene chloride?

Answer. In preparation for a number of public briefings on methlene chloride (DCM), the Commission staff has prepared briefing packages and memoranda which are publicly available and which discuss the available scientific information on the potential cancer risk posed by exposure to methylene chloride. Also, on February 28, 1986, the Commission issued a press release announcing its decision to initiate a rulemaking procedure on DCM under Section 3(a) of the Federal Hazardous Substances Act (FHSA). Then, on August 20, 1986, the Commission published a proposed rule in the Federal Register which (1) discussed whether household products containing methylene chloride should be determined to be hazardous substances by reason of DCM's potential carcinogenicity to humans and (2) solicited public comment. That Federal Register Notice generated 17 responses from interested parties, all of which were carefully evaluated by the Commission staff. Analyses of these comments and an updated risk assessment were then presented to the Commission in a briefing package (dated June 12, 1987), the contents of which were summarized in an open-to-the public briefing June 25, 1987.

Should the Commission decide the proceed with a mandatory rule or some other regulatory option, product labeling and other consumer information efforts are a likely result.

Question 25. Has the CPSC been informed of possible carcinogenic emissions from wood stoves? If so, when was the agency informed?

Answer. It is commonly known that wood-smoke contains a variety of combustion products including a spectrum of polynuclear aromatic hydrocarbons, some of which are carcinogenic. If a wood-stove is operating properly, it is assumed that the vast majority of the combustion products are vented to the outdoor air and diluted. In 1984, the CPSC funded research with the Tennessee Valley Authority to determine whether or not a properly operating wood-burning stove released carbon monoxide and/or polynuclear aromatic hydrocarbons (PAH) into the indoor air in sufficient levels to result in adverse health effects. Measurements were made, in a test facility, of the concentrations of a full range of combustion products including total suspended particulates, respirable suspended particulates and polynuclear aromatic hydrocarbons. Results of these tests indicated that levels of polynuclear aromatic hydrocarbons, which include benzo(a)pyrene, a suspected carcinogen, were elevated by the use of these wood stoves. The final report on these limited tests was received in

August, 1985. This was the first confirmation received by the agency that some level of carcinogenic emission from stoves were to be found in indoor air.

Since these limited tests had been conducted in a test facility rather than in real-use situations, the CPSC funded additional monitoring of these pollutants in home wood stoves as part of the larger Kingston-Harriman 300 House Indoor Air Quality Study. Data from that study, which were collected in an actual use situation, are currently being analysed by the staff and will be presented to the Commission later this year.

Question 26. Identify all advice that the CPSC provided to the public on possible hazards from wood stoves.

Answer. The increased use of auxiliary heating in the late 1970's produced a dramatic increase in residential fires caused by woodburning heating equipment. Major causes of these fires were identified as improper installation, unsafe use and inadequate maintenance of appliances, chimneys and chimney connectors.

Since that time, CPSC has endeavored to inform the public of the serious nature of the fire hazard and remedial measures that should be taken. Specifically, the Commission has advised consumers to:

Install new equipment according to existing building codes and manufacturer's instructions.

Check to make sure that existing stoves, chimneys, fireplaces and stovepipes are installed properly in accordance with local building codes and manufacturer's directions. If improperly installed, the equipment should not be used until the installation is corrected.

Check chimneys and stovepipes frequently during the heating season for creosote buildup and have them cleaned when necessary.

Have the entire system professionally inspected and cleaned at least once a year.

Be aware that "HT" (high temperature) metal chimneys provide greater protection than non-HT metal chimneys in the event of a creosote chimney fire.

Operate stoves within the manufacturer's recommended temperature limits. To that end, a chimney temperature monitor may be a useful accessory.

Make sure no flammable or combustible items are near a stove or a chimney pipe.

Never use a stove pipe or gas vent as a chimney.

Do not use flammable liquids to start a fire.

Use the correct fuel, never trash.

Place ashes in metal containers.

A variety of different avenues were followed to transmit this information. These included:

(1) A mandatory rule requiring permanent labels on stoves (adopted in May, 1983).

(2) Television and radio public service announcements.

(3) A press conference (on January 21, 1987).

(4) Media interviews.

(5) Distribution of printed materials (Fact Sheet, Consumer Safety Alert, Safety for Older Consumers brochure, What You Should Know About Home Fire Safety borchure, etc.).

(6) Community demonstration projects.

(7) Trade Show exhibits.

(8) Liaison with states, communities, fire departments, consumer organizations and industry.

(9) Workshops.

(10) Model stove installation manual (published in January, 1987).

In addition, the CPSC conducts a Home Heating Equipment consumer information program which emphasizes woodburning heating safety each year. While the Commission cannot say for sure that all these activities are responsible, it is encouraged by the fact that the number of woodburning-related residential fires has been declining since 1984.

Question 27. What is the status of research begun in FY 1986 on humidifiers and their allergenic effects? What is the pace of research on this issue and when will a report be produced?

Answer. Two types of research were begun in FY 1986 on humidifiers and their allergenic effects. One type deals with in-home measurements while the other involves laboratory tests.

The first series of in-home measurements were made for the CPSC by the Oak Ridge National Laboratory as part of the Kingstone-Harriman 300 home indoor air quality study initiated in 1985. These measurements have been completed and are currently being analyzed by the CPSC staff. In addition, a correlation between these measured levels and health effects is to be done by the Harvard School of Public Health. Results from this correlation are expected late in calendar year 1987.

A second phase of in-home measurements are being conducted by the University of Michigan in homes in: Portage, Wisconsin; Steubenville, Ohio; and Topeka, Kansas. Results of these studies are expected in fiscal year 1989.

With regard to the laboratory experiments, a number of difficulties were encountered in the initial stages of this research. However, the preliminary tests and the necessary modifications to the testing protocol have been completed. Experimental work will continue throughout FY 1987 and a final report is expected in July, 1988.

Question 28. Why did the CPSC fail to publish an advanced notice of proposed rulemaking for performance standards addressing pollutant emissions from kerosene heaters and from unvented gas space heaters?

Answer. The basic reason the CPSC has not issued an Advanced Notice of Proposed Rulemaking (ANPR) in recent years dealing with emissions from kerosene heaters and unvented gas space heaters (UVGSHs) is that the circumstances have not seemed to warrant the Commission taking such action. Last fall, however, the National Kerosene Heater Association (NKHA) petitioned the Commission to issue a mandatory rule limiting the nitrogen dioxide emissions of kerosene heaters and otherwise requiring those heaters to comply with Underwriters Laboratories (UL) Standard 647 on kerosene heaters. After a careful review, the CPSC's Office of General Counsel concluded that this petition met the necessary requirements and that the full Commission should decide if it should be granted.

To reach its decision, the Commission will have to examine not only the lastest facts but some past history. When problems associated with emissions from kerosene heaters and UVGSHs were identified, both the industries and UL volunteered to work with the Commission on possible remedies. Not only did the industries thereafter introduce new technology heaters that emitted fewer air pollutants, but they also worked to develop a certification test method that would enable the Commission, and others, to check the effectiveness of those heaters. As a consequence, the feeling has been that many of the issues that would be addressed by a mandatory rulemaking have been largely resolved, especially since considerable progress has been made towards perfection of the certification test method. Indeed, the rate of progress has been such that the CPSC staff expects to be in a position to seek a voluntary standard on nitrogen dioxide emission levels by the end of this calendar year. However, now that the industry itself has requested a mandatory rule, on the grounds that differing state standards would otherwise apply, further consideration will have to be given to that possiblity.

Question 29. What is the status of certification test methods for the measurement of pollutants from kerosene heaters and from unvented gas space heaters?

Answer. Draft certification test methods have been developed for the testing of both unvented gas space heaters and kerosene heaters. Testing to compare the results of the new test methods with chamber measurements is nearing completion. These results will provide a basis for the use of measured emission rates in extrapolating, through computer modeling, to pollution levels expected in a home. An emission rate for the certification test method can then be established with some assurance that it will provide the consumer with a reasonable level of protection in a home use situation. All this testing should be completed during the summer of 1987.

Question 30. How long has the CPSC recognized that the Federal Hazardous Substances Act requires labels on chronically hazardous consumer products?

Answer. The CPSC has always recognized that the Federal Hazardous Substances Act (FHSA) applies to chronically hazardous household products by virtue of the FHSA definition of "toxic substance". A part of Section 2(g) of the FHSA, that definition reads: ". . . any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface."

Commission recoginition of its responsibilities in the area of chronic hazard labeling has been demonstrated by a number of developments over the last several years. In 1985, for instance, the CPSC began evaluating whether consumer products containing methylene chloride should be declared chronically hazardous substances and labeled accordingly. In early 1986, to resolve scientific uncertainties surrounding the issue, the Commission voted to issue a proposed rule under Section 3(a) of the FHSA, and it is now in the process of determining whether a final rule on methylene chloride, which would set the stage for a chronic hazard label, should be published. Also, in October 1986, the CPSC voted to adopt an enforcement policy on consumer products containing asbestos. That policy, which took effect 90 days after it was issued, requires such products to be labeled in such a way as to warn consumers of the cancer risk posed by asbestos.

Inasmuch as other chemicals suspected of posing chronic hazards are in the process of being investigated or will be coming to the Commission's attention in the

future, the Commission has also undertaken a project in FY '87 designed to help develop criteria and guidelines for a systematic approach to chronic hazard labeling. Also, to encourage voluntary implementation of chronic hazard labeling, the Commission's Acting General Counsel issued an Advisory Opinion on March 19, 1987 concerning the jurisdictional applicability of such labeling under the FHSA. That Opinion concludes that, is a consumer product is subject to the labeling requirements of the FHSA, because it is believed to pose a chronic hazard, then those requirements cannot be pre-empted by differing state or local labeling regulations.

Question 31. What is the CPSC's explanation for its inaction up to now in regulating consumer products that pose chronic hazards?

Answer. The Commission has not been inactive in regulating consumer products found to pose a chronic hazard. In addition to the efforts previously mentioned (see response to question #11) the CPSC has taken the following regualtory actions:

Vinyl Chloride

1974/1987.—Banned the use of vinyl chloride monomer as an ingredient or propellant in self-pressured household products.

Nitrosamines

1984.—Issued an enforcement policy to limit the use of nitrosamines in pacifiers

DEHP

1983.—Authorized creation of a Chronic Hazard Advisory Panel to consider chronic hazards associated with exposure to DEHP from vinly baby pacifiers and teethers.

1986.—In response to a CPSC request, the Toy Manufacturers of America (TMA) developed a voluntary standard to limit the use of DEHP in vinyl baby pacifiers and teethers.

Question 32. Now that it has issued a formal statement of authority to require chronic hazard labeling, does the CPSC intent to follow it up with enforcement? If so, what steps does the CPSC plan to take?

Answer. While it will help clarify the fact that consumer products containing chronically hazardous substances must be labeled in accordance with the FHSA and that such labeling takes precedence over any state or local labeling requirements, Advisory Opinion #309 does not establish any new regulatory requirements. As noted in respone to Question #30, the CPSC has always recognized that the FHSA requires labels on chronically hazards consumer products. And, as in the past, it will continue to enforce the FHSA labeling requirements for chronic as well as acute hazards.

With regard to specific steps the CPSC plans to take, one will be to follow up on the statement of enforcement policy adopted by the Commission last fall calling for the chronic labeling products containing asbestos. Also, if the Commission promulgates a final rule declaring methylene chloride to be a hazardous substance by virtue of its carcinogenicity to humans, then the staff under the CPSC's ongoing Chemical Hazards Enforcement Program will take steps to ensure that products subject to that rule are properly labeled. In addition, the CPSC staff is working with art and craft trade groups in an effort to communicate to all manufacturers and distributors of art and craft materials their responsibilities for both chronic and acute hazard labeling under the FHSA. Nor will the effort stop there. A consumer alert on art and craft materials is planned for dissemination to parents and teachers, and an art material handbook will be developed to provide guidance on their safe use, handling, storage and disposal.

It should also be noted that the CPSC staff is currently reviewing a proposed voluntary standard on precautionary labels for hazardous industrial chemicals. This draft standard was developed by a leading chemcial trade association and has been submitted to the American National Standards Institute (ANSI) for consideration as a consensus standard. CPSC input into this process is likely to be facilitated by the fact that the Commission has its own FHSA chronic hazard labeling project underway in FY '87. A description of that project is contained in the response to Question #30.

Followup Questions Submitted by Senator Gore

Question 1. What is the CPSC's policy to ensure compliance with standards applying to products such as those which brought about the death of Mr. Snow's daughter and the CPSC resources committed to compliance?

Answer.The Consumer Product Safety Commission conducts a compliance program to enforce safety regulations for toys and children's products. Enforcement of the labeling criteria for lawn darts and the prohibition of lawn dart sales in toy

stores and toy departments is a part of this program. Lawn darts are banned as children's articles but may be sold as a game of skill for adults under certain conditions which include specific warning labels and a prohibition against sales in toy stores by toy departments of stores.

For fiscal year 1987, the CPSC has allocated 10.9 FTE's to enforcing its safety regulations for toys and children's products. To make the best, most-efficient use of these resources, the Commission concentrates its enforcement efforts on suspected instances of non-compliance rather than relying on random sampling of products. Our experience has shown that a targeted approach, using leads obtained for a variety of information sources, results in a higher percentage (slightly over 50%) of violative products being identified (compared to samples collected) than does the random inspection approach.

Leads about products that may not comply with CPSC regulations are obtained from a variety of sources, including: Consumer complaints; trade complaints; reports of injuries and deaths; reports of hazardous products filed by companies under section 15 of the Consumer Product Safety Act; CPSC staff observations at trade shows; CPSC staff observations during reviews of firms' catalogs; newspaper articles; and reinspection of firms which have had previous violations.

Once a lead results in the identification of a potential violation, members of the Commission's field staff inspect manufacturers, importers, distributors and retailers. In addition, they collect samples of suspect products to be tested or evaluated for compliance with applicable regulations. When violations are confirmed, manufacturers and importers are promptly notified of the violations and asked to stop distribution immediately. The Commission also requests that products which present serious hazards be recalled from retailers and consumers.

Most companies voluntarily cease distribution of, and conduct recalls on, violative products when asked to do so by the Commission. In fact, over 95% of the corrective action plans in which the Commission is involved are agreed to voluntarily. However, there are instances where the company involved is not willing to undertake the desired corrective action on its own initiative. In those cases, legal action has been taken by the Commission, just as it will be taken in the future if the circumstances warrant.

Question 2. How many complaints concerning lawn darts have been received by CPSC?

Answer. There were 28 complaints related to lawn darts reported to the CPSC from July 1, 1973 through April 1987. This does not include reports of injuries the CPSC has received from its National Electronic Injury Surveillance System (NEISS). That figure is provided in response to question 3.

Question 3. How many injuries and deaths related to lawn darts have been reported to CPSC?

Answer. From calendar year 1978 through 1986 the CPSC received, from the hospital emergency rooms that comprise NEISS, reports of 105 injuries associated with lawn darts. Based on that figure, the Commisison estimates there were 6,100 lawn dart related injuries treated in the nation's hospital emergency rooms during that period, an average of approximately 680 injuries per year.

Since 1970, the CPSC is aware of two deaths associated with lawn darts. Michele Snow, who died in April 1987, was the most recent death reported through CPSC's Reported Incident File. The other involved a 4 year old boy in North Dakota who died in August 1970.

Question 4. What is the status of CPSC compliance efforts undertakan in response to complaints concerning lawn darts and the status of any efforts undertaken in response to Mr. Snow's situation?

Answer. Lawn darts are exempted from classification as a banned toy or other banned article for use by children under Federal Hazardous Substances Act Regulations, CFR 1500.86(a)(3). The regulations state that lawn darts and similar sharp-pointed articles not intended for toy use and marketed solely as a game of skill for adults must bear a specific statement (set out in the regulations) on the front panel of the carton and on any accompanying literature. The statement on the carton must be printed in sharply contrasting color, within a border, and in letters at least one-quarter inch high. In the accompanying literature (instructions) the lettering must be at least one-eighth inch high.

As noted in question 3, the CPSC is aware of two deaths associated with lawn darts. Also, the Commission estimates there were 6,100 injuries associated with these darts from 1978 through 1986. Appproximately 12 million individual lawn darts may be in use at this time.

As a result of the Snow tragedy and our independent observations of lawn darts which failed to meet the labeling criteria, an assignment was issued to the CPSC's

field staff on June 8, 1987 to inspect a minimum of 100 retail stores including toy, variety, department and sporting goods stores. While the results have not been fully tabulated, a number of violations have been identified as follows:

Retail Sales of Lawn Darts.—One hundred ten (110) retail stores have been inspected so far. Four toy stores out of the thirty-two which were inspected were found to be selling lawn darts. The management at all fours stores has been informed verbally of the ban on sales of lawn darts in toy departments/stores and told to stop sale. Six variety and department stores out of the fifty-three inspected were discovered selling lawn darts in toy departments. Management at these six stores has been informed of the ban on lawn dart sales in toy departments and told to either stop selling lawn darts or move them out of the toy department. Generally, all store management has agreed to our requests. The Commission staff will monitor these stores to ensure that violative sales practices have ceased. Also, the staff will confirm these violations in letters to retailers and will request that consumers be notified, through store posters and possibly news releases, of the potential hazards presented to children by the lawn darts they sold.

Three variety stores and three sporting goods stores out of twenty-five inspected were selling lawn darts with sporting goods but displaying them close to items which were obviously intended for young children. Here again, CPSC staff will be requesting that personnel in those six stores move the lawn darts away from items that are obviously child oriented. Also, guidance to retail stores will be provided on the appropriate display of lawn darts with sporting goods.

Lawn Dart Labeling.—During inspections of retailers, the CPSC investigators collected samples of lawn darts for review of the labeling. Twenty-one (21) models of lawn darts from thirteen importers and one distributor of domestically manufactured lawn darts were collected. Ten products from eight firms were found to have serious labeling violations, namely the total absence of the required warning statement on the front panel of the package. A number of the products also were found to have less serious labeling violations in conjunction with the instructions. These eight firms with the serious violations have been told to (1) stop distribution of the lawn darts, (2) recall them from retail stoes or arrange to have all labeling violations corrected at the retail level with stick-on labels, and (3) provide notice to the public of potential hazards that law darts present to children. They have agreed to our requests.

Eleven (11) products from seven firms (including one of the firms which had a serious labeling violation) has less serious labeling violations such as inadequte instructions or a smaller than required warning label on the front of the box. Relabeling the boxes with warning labels in the required type size is the usual remedy for this type of violation. These firms will be notified of violations and requested to stop distribution until they are corrected.

We will monitor correction of violations by retailers, importers, and the distributor to make sure that adequate corrections are accomplished promptly.

Investigation of Lawn Darts Involved in the Death of Michele Snow and the Retail Sale of These Lawn Darts.—We have ascertained the following facts regarding this tragic accident.

The original lawn dart carton conformed to the CPSC's labeling requirements, based on the Corner's report to the incident which contained a photograph of the box purchased by Mr. Snow. The original carton, which we have inspected, is in the hands of Mr. Snow's attorney. The carton used by Mr. Snow during his appearance before Congress was not in compliance with the labeling requirements. This second carton was purchased in April, 1987 by a law clerk from Mr. Snow's attorney's office. This carton was purchased at a store different from the one where Mr. Snow bought the game set that included the fatal lawn dart. We believe this non-complying carton is no longer being distributed by the firm.

Mr. Snow has indicated he bought the three-game combination set containing lawn darts in December, 1986. During our inspection in June 1987, we found the display at the end of an aisle featuring sporting goods. The display of lawn darts in sporting goods departments has been permitted in the past. However, the location was within a few feet of children's tricycles and bicycles with training wheels. Therefore, we requested the manager of the Riverside, California, store to remove the lawn darts from this location because of the close proximity to children's toy articles. Six other retail stores in this chain of outlets were inspected and did not display lawn darts near toys.

Our investigators recently inspected the importer of the lawn darts involved in this incident. Samples were collected of all of the firm's lawn dart sets and combination game sets, which include lawn darts, to evaluate compliance with the regulations. The labeling criteria of the exemption on three of the four cartons was being

met by the firm. However, although directions and warnings were included on the accompanying literature (instructions), these warnings did not contain the specific language required in the regulations. On the fourth carton, a four-game combination set, the required labeling on the front panel of the carton was found to be 1/16 inch smaller than the required type. The importer will be told to stop distribution until these violations are corrected. Reprinting the instructions with the required specific language would be an acceptable remedy for this type of violation.

The actual lawn dart involved in the fatality had been altered subsequent to manufacture. Instead of having a point less than an approximate two inches long with a diameter of ¼ inch, the dart in question had a point more than eight inches long with a diameter of ⅛ inch. The Riverside County Corner's Report had originally shown the diameter to be approximately 1/16 inch, but subsequent examination showed it to be ⅛ inch.

With regard to the retailer involved in the Snow case, there is no clear violation of the CPSC's lawn dart regulation. However, it would have been more prudent for the retailer not to have located the lawn darts near the toy displays. While the retailer has been asked to relocate the lawn dart displays, no enforcement action is contemplated at this time.

Question 5. Has the CPSC ever considered banning the sale of lawn darts?

Answer. The CPSC has been presented various staff suggestions for making the current regulations more meaningful. One of these suggestions is revocation of the exemption to the existing ban which permits the sale of lawn darts in retail stores, other than toy stores and departments, if the darts carry the required warning statements. Revocation of this exemption would result in a total ban of lawn darts.

Question 6. Does the exemption for classification as a banned hazardous substance for educational materials [16 CFR 1500.85(a)(4)] apply to children in grades kindergarten through 6? If not, what does the CPSC intend to do to inform parents and educational institutions about the limitation on this exception?

Answer. The exemption, from classification as banned hazardous substances, which exists for education materials, including art materials, would not apply to products intended for children in grades kindergarten through six. A limitation to the exemption, found in Section 2(q)(1) of the Federal Hazardous Substances Act (FHSA), states that exemptions may be granted only on the condition that the articles" . . . are intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings . . . ."

The CPSC staff is curently working with art and craft trade groups in an effort to inform or remind all manufacturers and distributors of art and craft materials of this limitation and their responsibilities for both acute and chronic hazard labeling under the FHSA. To get this information to parents and teachers, the CPSC will be preparing a consumer alert for dissemination. Additionally, the CPSC staff is going to begin work with the art materials industry, consumer groups and educational groups to develop an art materials handbook. This booklet will provide guidance on the safe use, handling, storage and disposal of art and craft materials.

Question 7. What is the CPSC's policy with regard to consumer complaints concerning adult and child-size sunglasses?

Answer. Adult and child-size sunglasses are "medical devices" and are subject to regulations issued by the Food and Drug Administration (see 21 CFR § 801.410). "Medical devices" are specifically excluded from the products subject to the Commission's jurisdiction under provisions of the Consumer Product Safety Act by Section 3(a)(1)(H) of that act (15 U.S.C. § 2052(a)(1)(h)). However, the Federal Hazardous Substances Act (FHSA) (15 U.S.C. § 1261 *et seq.*) gives the Commission authority to regulate toys and articles intended for use by children. The FHSA does not exclude "medical devices" from the products which are subject to the Commission's authority under the provisions of the act. Thus, the Commission has the authority to regulate child-size sunglasses under provisions of the FHSA if it appears necessary.

If the Commission receives a complaint concerning either adult or child-size sunglasses, the Commission's policy is to refer that complaint to the Food and Drug Administration as the agency having exclusive jurisdiction over adult sunglasses and considerable experience in dealing with child-size sunglasses. However, the Commission would be free to reassert its claim to jurisdiction if it appeared that an unreasonable risk of injury existed and that the FDA was unlikely to take remedial action.

Question 8. Should the Consumer Product Safety Act be amended to impose a time limit requiring the CPSC to determine whether to pursue a Section 12 imminent hazard action on its own in situations when the Department of Justice fails to act on a request by the CPSC to pursue such an action?

Answer. No. Such an amendment is not necessary. The Consumer Product Safety Act gives the Commission the authority to pursue a Section 12 imminent hazard action on its own without the assistance of the Department of Justice. Imposition of a fixed time limit would be unfair to the Department of Justice in cases that are highly technical or involve a voluminous record. For example, in the ATV enforcement action, due to the complexity of the issues, the 14,000 page record, resource consideration and the Commission's record in previous Section 12 cases, a decision was made to seek the assistance of the Department of Justice. Conversely, a time limit would not give the Commission the flexibility it needs in pursuing different types of enforcement actions, and would inhibit decision-making where complex litigation is involved.

QUESTIONS SUBMITTED BY SENATOR BREAUX TO CHAIRMAN SCANLON

Question 1. The CPSC states that it is aware of 696 "ATV-related" deaths since 1982. How many of these were caused by the ATV? I understand some were caused by gunshots, electrocutions, or drownings. Why have you included incidents that were not caused by ATV's.

Answer. In September 1986, the Directorate for Epidemiology prepared a hazard analysis of All-Terrain Vehicle (ATV) related injuries and deaths. Wherever possible, investigations were made of these deaths after they were reported to the Commission. Information on all cases reported to the Commission is always included if an ATV accident is listed on the death certificate. This helps to keep all the cases in perspective.

It is not usually possible to identify a single cause in accidents of this type. The "cause" is usually the result of several interactions involving the ATV, the rider and the environment in which the ATV is being ridden. Investigation and analysis has provided the information needed to help define the various roles of those elements.

Commission staff were able to compute the risk of death by vehicle type, engine size, type of suspension, model year, driver age, driver sex, carrying of passengers and use on paved roads. Further analysis, done under contract, showed that poor driving judgment was a major contributing factor in fatal accident causation (in 29.6% of the 250 cases reviewed in depth), along with excessive speed (29.6%), poor operating proficiency of the driver (25.6%) and alcohol consumption (21.2%). Usually two or more of these factors combined to play a role.

Insufficient data was available to assess the causal role of the ATV in 63.6% of the 250 fatal accident cases reviewed but, in 28.8%, the vehicle was adjudged by analysts as not being a causal factor. In 7.2% it was judged that vehicle instability or component malfunction was a causal factor.

Question 2. The CPSC estimates the number of ATV-related injuries treated in hospital emergency rooms in 1986 to be 86,400. How many were caused by the ATV? How many actual injuries does the CPSC count in that year?

Answer. As mentioned previously, often it is not possible to identify a single cause of ATV accidents. Usually, they are the result of several interactions involving the ATV, the rider and the environment in which the ATV is being ridden. Additional information on accident scenarios, the interaction of factors contributing to ATV accidents and the relative risk of injuries and deaths, can be found in hazard analysis on ATV-related injuries and deaths referred to in the response to the previous question.

In 1986, treatment of 1,101 ATV related injuries in hospital emergency rooms was reported through the National Electronic Injury Surveillance System (NEISS). These cases formed the basis for a national estimate of 92,900 hospital emergency room treated injuries. However, only 93% of these injuries were confirmed in the injury analysis, prompting a downward revision of the national estimate to 86,400.

Question 3. What is the injury and death experience during utility use of ATV's (e.g., farming)?

Answer. According to an Injury Survey conducted by the Commission's Directorate for Epidemology, about 7 percent of ATV accidents (roughly 6,000) occurred when ATV's were being used for non-recreational purposes, approximately 4% took place (roughly 3,400) during farming or ranching activities, around 2% occurred in organized events and roughly 1% happened when the ATV was being used for some other non-recreational use. Available data on ATV-related deaths does not indicate how the machines were being used when the fatal accidents occurred.

In September 1986, the Directorate for Economic Analysis completed a report entitled "Factors Affecting the Likelihood of All-Terrain Vehicle Accidents." This analysis indicated that ". . . the probability of an accident decreased if the ATV in

used for non-recreational purposes. Few drivers used their ATV solely for non-recreational purposes. However, the greater the percentage of time the ATV is used non-recreationally, the smaller the probability of an accident."

Based on the available data, the Commission cannot say that non-recreational use of ATV's is associated with a reduced probability of accident; our data only shows that ATV's used for non-recreational purposes are generally involved in fewer accidents. This may be because some work-related activities require that the driver ride in a safer manner to accomplish the task. Alternatively, drivers who use their ATV's non-recreationally simply could be safe drivers, or not inclined to take the risk that recreational drivers take to have fun.

QUESTIONS SUBMITTED BY SENATOR MCCAIN TO CHAIRMAN SCANLON

Question 1. If the Consumer Product Safety Commission (CPSC) were to proceed with its mandatory rulemaking regarding ATVs, what would be the cost to the agency? Is that money presently available?

Answer. The CPSC spent $2.274 million in FY '85 and FY '86 to assess the hazards associated with ATVs. In addition, the Commission allocated $850,000 in FY '87 and $808,000 in FY '88 to support development of a mandatory rule, some of which has been spent and much of which remains available. Also, the Commission will consider additional funds for FY '89 during its budget deliberations this summer.

Question 2. What percentage of the ATV-related deaths and injuries known to the Commission involved "child-size" ATVs?

Answer. Currently, the Commission is aware of one death and three minor injuries associated with the use of "child-size" ATVs (those with 50 and 60 cc engines). Those figures represent approximately 0.1% of all the deaths and 0.001% of all the injuries associated with ATVs of which the Commission is presently aware. However, after an extensive 18 month study, the Commission's ATV Task Force concluded that, typically, children under 12 years of age (who would be most likely to ride a child-size ATV) are unable to operate any size ATV safely. The ATV Task Force based its finding on a human factors study and on the testimony of pediatricians obtained during the course of six public hearings on ATVs.

In addition to the death and injury figures just mentioned, the Commission also has statistical information available on the relative risk of ATV related deaths and injuries by age of drivers and engine size. Those data, in chart form, are attached for the subcommittee's information.

TABLE 1.—RELATIVE RISK OF ATV-RELATED DEATHS (1985)

[By age of driver and engine size]

Age of driver (years)	Engine size							
	50 to 60 CCD		70 to 80 CCD		90 CCD or more		Total	
	Percent	Relative risk	Percent	Relative risk	Percent	Relative risk	Percent	Relative risk
Less than 12	[1] D 0.56		D 3.9		D 11.3		D 15.8	
	E .99		E 3.4		E 8.0		E 12.4	
		[1] R .57		R 1.2		R 1.4		R 1.3
12 to 13	D 0		D 0		D 10.2		D 10.2	
	[1] E .10		E .59		E 6.0		E 6.7	
		R 0		R 0		R 1.7		R 1.5
14 to 15	D 0		D 0		D 18.6		D 18.6	
	E 0		E .20		E 6.1		E 6.3	
		R 0		R 0		R 3.0		R 3.0
16 or more	D 0		D 0		D 55.4		D 55.4	
	E .49		E 2.1		E 72.0		E 74.6	
		R 0		R 0		R .77		R .74
Total	D .56		D 3.9		D 9.55		D 100	
	E 1.6		E 6.2		E 92.2		E 100	
		R .35		R .63		R 1.0		R 1.0

[1] Based on 1 or 2 reports.

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis.

NOTE.—Sample size: Deaths: 177 reports. Exposure data: 1012 reports. D=Deaths (1985) reported to CPSC. E=Exposure survey (Market Facts, Inc.). R=D/E=Relative risk to death.

TABLE 2.—RELATIVE RISK OF ATV-RELATED DEATHS (1985)

[By age of driver and engine size]

Age of driver (years)	Engine size							
	50 to 60 CCD		70 to 80 CCD		90 CCD or more		Total	
	Percent	Relative risk	Percent	Relative risk	Percent	Relative risk	Percent	Relative risk
Less than 12	[1] I 64		I 4.2		I 11.8		I 16.7	
	E 99		E 3.4		E 8.0		E 12.4	
		[1] R 65		R 1.2		R 1.5		R 1.3
12 to 13	I 0		[1] I .34		I 11.3		I 11.6	
	[1] E .10		E .59		E 6.0		E 6.7	
		R 0		[1] R .58		R 1.9		R 1.7
14 to 15	I 0		[1] I .99		I 15.5		I 16.5	
	E 0		[1] E .90		E 6.1		E 6.3	
		R 0		[1] R 5.0		R 2.5		R 2.6
16 or more	I 0		I 0		I 55.2		I 55.2	
	E .49		E 2.1		E 72.0		E 74.6	
		R 0		R 0		R .77		R .74
Total	I .64		I 5.5		I 93.8		I 100	
	E 1.6		E 6.2		E 92.2		E 100	
		R .40		R .89		R 1.0		R 1.0

[1] Based on 1 or 2 reports.

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, Division of Hazard Analysis.

NOTE.—Sample size: Inquiries: 238 reports. Exposure data: 1012 reports. I = Injury survey (NEISS—1985). E = Exposure survey (Market Facts, Inc.). R = I/E = Relative risk of injury.

Question 3. Why did the OPSC ask the Department of Justice (DOJ) to represent it in litigation under CPSA Section 12 regarding ATVs?

(a) How long does Justice have to decide whether to represent the CPSC, and has that time limit expired?

(b) If Jusice should refuse to represent the CPSC, what would it cost the CPSC to represent itselt and is that funding available?

Answer. The Civil Division at the Department of Jusice (DOJ) has exprience in handling complex litigation that is unmatched by the Consumer Product Safety Commission's small legal staff. Since no prior Section 12 case has been litigated in a full-scale trial, the additional resources of the DOJ are all the more important. Also, it should be noted that the DOJ already represents the Commision on a routine basis when the latter seeks civil penalties and other enforcement actions in the federal courts.

Another significant benefit attached to the DOJ's representtion is possible avoidance of protraced litigation on the "separation of powers" issue associated with the enforcment powers exerecised by independent regulatory agencies such as the CPSC.

In the last 10 years, the Supreme Court, in such cases as *Buckley, Bowsher* and *Chadha*, has raised serious constitutional questions about delegated powers, and such an issue certainly could be raised by the BTV industry's Washington counsel if the CPSC had sought to file the Section 12 action in the Federal courts on its own behalf.

However, referring the Section 12 matter to an executive branch agency (the DOJ) for representation may have effectively removed this issue from the list of those that may be litigated thereby saving time and, more importantly, lives that would otherwise be lost during the course of extended legal proceedings on a collateral issue basically unrelated to ATV safety. In that connection, it should be noted that the last Section 12 case the Commission filed on its own behalf, involving aluminum wire, was litigated for five years on the collateral issue of jurisdiction, and was eventually lost on that point alone.

On (a), there is no time limit within the DOJ must respond. However, since the CPSC decided to refer the case to the DOJ, and since 45 days have elapsed from the date of the referral within the meaning of Section 27(b)(7), the CPSC is authorized to institute civil proceedings in its own name, using its own attorneys if it so chooses.

As for (b), preliminary estimates of the staff and resources that might be necessary if the Commission were to represent itself in court have been made by the Commision's Office of General Counsel. However, a definitve determination of these

costs has not been reached and, even if such an esstimate was available, I do not believe it would be wise for the CPSC to proceed on its own. First, for the reasons cited above, experienced DOJ attorneys will be very helpful to our case. And second, the DOJ has acknowledged that it is already representing the CPSC at this stage. That it took somewhat longer than 45 days for the DOJ to reach that conclusion is understandable in light of the complexity of the issues, the 14,000 page record and the nature of the remedies being sought.

Question 4. Is there a need to more specifically define "imminently hazardus consumer product" as that term is used in the Consumer Product Safety Act (CPSA) Section 12?

Answer. No. There term "imminently hazardous consumer product" is necessarily broad to cover a variety of situations where use of the statute would be in the public interest.

Question 5. What is the average length of time required by the Consumer Product Safety Commission (CPSC) to develop and implement a mandatory product safety standard?

Answer. The agency has not routinely tracked the time frame required to implement all of its mandatory standards. However, a sample of three (3) standards revealed that an average of 5.5 years development time was required.

Question 6. What is the average length of time required for the development and implementation of a voluntary standard?

Answer. A recent study of thirty-two (32) standards projects revealed an aveage time spent of 3.4 years. It is important to note, however, that the Commission does not always participate in the development of totally new standards. Most of our activities involved the improvement of existing standards. Nevertheless, it is significant that, of these 32 voluntary standards projects, 13, or 41%, were accomplished in two (2) years or less. As a consequence, when mandatory and voluntary standards are compared, the amount of time needed for development purposes can be considerably less for a voluntary standard.

Question 7. Do you perceive any problems or conflicts resulting from the initiation by the Consumer Product Safety Commission (CPSC) of litigation against the ATV industry, while at the same time the Commission is engaged in development of a voluntary ATV standard, in cooperation with the same industry?

Answer. To date, no. The CPSC staff is working with the ATV industry to develop a voluntary standard to address ATV performance characteristics, including dynamic stability. This effort is continuing even though the ATV industry knows the Commission voted 2-1 (I dissented) to seek an enforcement action under Section 12 of the Consumer Product Safety Act (CPSA). In that context, it should be noted that Section 12(c) also provides that: "Where appropriate, concurrently with the filing of such action or as soon thereafter as may be practicable, the Commission shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product with respect to which such action is filed." This provision makes it clear that a rulemaking proceeding, which necessarily involves potential reliance on a voluntary standard under the Consumer Product Safety Act, is not inconsistent with litigating an "imminent hazard" case.

Question 8. What is your view of state efforts to address safety problems associated with ATVs?

(a) The Specialty Vehicle Institute of America has developed a model state statute regarding ATVs. Has the Consumer Product Safety Commission (CPSC) been active in the development and dissemination of this statute?

Answer. A review of state laws by the CPSC staff, the results of which were included in the CPSC's ATV Task Force Report, found that less than half of the states have enacted regulatory and/or educational options to deal with ATVs. Of those states which took action, some did so based on limited technical, epidemiological and human factors analysis. As a consequence, state regulation of ATVs follows no set pattern and its effectiveness, in terms of injury reduction, is unknown.

In November, 1986, following release of the ATV Task Force Report, the Commission held a conference for its state designees in Louisville, Kentucky during which ATVs were discussed extensively. Greater federal-state cooperation on ATVs and other product safety issues has been the result. In addition, the Commission sent a letter (on January 28, 1987) to all Governors stressing the importance of ATV safety. Information was provided on injury and death data, the unique handling characteristics of ATVs, minimum age recommendations, the virtues of wearing helmets and protective clothing, and the importance of not consuming alcohol, riding with a passenger or riding on paved roads.

Also, the CPSC has shared ATV safety information with a Model State ATV Legislation Committee (composed of representatives from Kentucky, California, Tennes-

see, and Connecticut) formed to develop draft model state legislation. This committee reviewed and considered the California ATC Act, the Pennsylvania ATV and the Specialty Vehicle Institute of America's suggested model state statute in the process of drafting its proposed model act. This proposed Model State ATV Act was then sent to the CPSC's state designees on May 15, 1987.

Question 9. If the Commission size remains at three, would you recommend any changes to the Consumer Product Safety Act (CPSA), such as the number of Commissioners required to constitute a quorum?

Answer. My hope is that the Commission will not remain a three member body. Such a structure retains all the administrative inefficiencies of a five member Commission, while compromising the diversity that is the strength of a pentagonal body. A single administrator would be preferable. Failing that, I would suggest a return to the five member collegial unit, with the Commissioners, other than the Chairman, serving on a per diem rather than a full-time basis.

With respect to quorum requirements, it should be noted that a quorum of two (for a three member Commission) has the practical effect of preventing any face to face or telephone conversations between any two Commissioners without official meeting notice being filed in advance. However, if the Congress decides a three member Commission is best and that the quorum requirement by two Commissioners instead of three, my recommendation is that one of the two Commissioners should have to be the Chairman. That way the Commission may be able to conduct business more frequently without jeopardizing the authority of the Chairman to administer the agency as provided for in Section 4(f)(1) of the CPSA.

Question 10. If the Consumer Product Safety Commission (CPSC) were restructured as a single administrator agency, would you recommend that it remain independent or should it be merged with another agency?

Answer. My recommendation is that the CPSC should remain independent. One of the principal reasons I favor a single administrator above all other structural forms for the Consumer Product Safety Commission (CPSC) is that such a structure would result in quicker, more efficient decisionmaking. To incorporate the CPSC into another agency would mean that the decisions of the single administrator would likely be subject to at least one more level of review, which could defeat the objective of streamlined decisionmaking. Also, incorporating the CPSC into another agency might result in a lessening of the visibility currently accorded public safety concerns which could, in turn, detract from efforts to educate and inform consumers. And finally, merging the CPSC into another agency is potentially more disruptive than maintaining it as an independent agency, especially at a time when the Commission is heavily engaged in finding solutions to several major product safety problems.

Question 10a. If independent, under what circumstances should the administrator be subject to removal by the President?

Answer. The Consumer Product Safety Act (CPSA) currently provides that the Chairman and Commissioners of the Consumer Product Safety Commission (CPSC) can be removed only for neglect of duty or malfeasance in office. My recommendation would be to simply apply that same language to a single administrator if one were to be appointed. Consideration might be given, however, to additgional language to address the question of who would run the agency in the event the single administrator were incapacitated or the office were to become vacant.

Question 10b. If incorporated into another agency, with an administrator subject to confirmation by the Congress, under what circumstances should the administrator be subject to removal by the President?

Answer. Here again, I would recommend that causes for Presidential removal of the administrator be limited to those that currently apply to the Chairman and Commissioners of the CPSC: neglect of duty and malfeasance in office. But, depending on the agency into which the Consumer Product Safety Commission (CPSC) was being merged, consideration might be given to the question of what happens in the event of the incapacity of the CPSC administrator or a vacancy in that office.

Question 11. If the Consumer Product Safety Commission (CPSC) were to be converted to a single administrator agency, when should such a conversion occur and what steps should be taken to ensure a smooth transition?

Answer. To make matters easier, I would recommend that the changeover to a single administrator take place in three phases. Plase I, beginning immediately after adoption of the enabling legislation and running until September 30, 1988, would consist of planning for the changeover and either completion of on-going rulemaking or making provision for the ultimate disposition of proposed rules by the future single administrator. Phase II, starting October 1, 1988 and continuing until a permanent single administrator could take office, would be a transitional phase

during which the agency would learn from the experience of operating under an interim single administrator and make necessary refinements. Full scale, fine tuned operations under a permanent single administrator—Phase III—would begin as soon as the person nominated to fill that position by the newly elected President was confirmed by the Senate and sworn into office.

In addition to providing sufficient time for all the adjustments that would be necessary, this phased-in approach has the virtue of making the date of the changeover for a collegial body to a single administrator agency (October 1, 1988) coincident with the start of a new Fiscal Year. That, plus the recognition given to the advent of a new administrator in early 1989 should make the conversion to a single administrator easier than might otherwise be the case.

Question 12. If the size of the Commission is permitted to return to five, how much additional funding would the Consumer Product Safety Commission (CPSC) require? Is that additional funding currently available?

Answer. The 1987 appropriation and our 1988 budget request include sufficient funds to support only three Commissioners and their staffs. A budget increase of approximately $500,000 would be required to support a return to a full-time five member Commission.

However, such a return could be accomplished at less additional expense if the four Commissioners, other than the Chairman, were put on a per diem rather than a full-time basis and their staffs were reduced accordingly. Personally, I would support such an approach as the next best alternative to a single administrator.

Question 13. Please provide statistics on the number of Freedom of Information Act (FOIA) requests processed annually by the Consumer Product Safety Commission (CPSC) since 1984, and the average length of time required to process an FOIA request.

Answer. The Commission has processed the following number of FOIA requests over the past three years:

1984	10,900
1985	12,500
1986	13,500

It is difficult to estimate an average length of time to process a request because the requests vary considerably in complexity and response volume, and thus in length of time to answer. A full 60% of all requests are answered within 10 days. However, requests such as those which ask for all Commission information on a product or class of products, or those which require sending a Section 6(b) notice to a manufacturer, may take up to six month or more to fill.

Question 14. Please provide the same information requested in Question 13 for Freedom of Information Act (FOIA) requests involving the Consumer Product Safety Act (CPSA) Section 6(b) matters.

Answer. Under the Section 6(b) provisions, all material provided to FOIA requestors must be cleared to ensure that it is suitable for release. Approximately one-third of the material contains product or manufacturer-related information requiring information notification to manufacturers or special processing (such as excising identities) before release to the requestor. This percentage has not changed significantly over the three year period.

During each of the last three years, the Consumer Product Safety Commission (CPSC) has sent approximately 1,000 notices to manufacturers and private labelers. When notices must be sent to manufacturers or others regarding release of information which identifies them, the processing time is well above the average for all FOIA requests. We estimate that, on average, it takes approximately six months to fill such requests.

Question 15. How many Freedom of Information Act (FOIA) requests were denied by the Consumer Product Safety Commission (CPSC) in whole or in part in each year since 1984, because of Section 6(b)?

Answer. The number of requests denied on Section 6(b) grounds are as follows:

1983	578
1984	434
1985	287
1986	271

The decline in request denials reflects a change in Commission policy regarding the release of unconfirmed complaints received from individual consumers. With the passage of the 1981 amendments to the CPSA, all unconfirmed complaints were withheld from FOIA requestors. However, beginning in 1983, consumers were asked to verify, in writing, the informaiton contained in complaints and manufacturers

were given an opportunity to comment on the complaint. As more and more complaints are being verified, fewer and fewer of them are being withheld from FOIA requestors.

Question 16. Should cost/benefit analysis such as that required by the Consumer Product Safety Act (CPSA) Section 9 also be considered by the Commission in Section 12 and/or Section 15 perceedings?

(a) In your view, is such consideration in Section 12 and/or Section 15 proceedings currently required?

(b) Should the CPSA be modified to address use of cost/benefit analysis in Section 12 and/or Section 15 proceedings?

Answer. While not the only analytical tool that can, or should, be used by the Commission, I believe that cost benefit analysis can be very helpful with respect to Section 12 and Section 15 proceedings. By quantifying advantages and disadvantages, cost-benefit can help both the Commission and the manufacturer evaluate the various options and reach mutually satisfactory decisions. Depending on the circumstances, it could prompt the Commission to seek and/or a manufacturer (or distributor) to accept a more sweeping remedy than was initially anticipated or proposed. Furthermore, since the CPSC has the relevant economic data available in most instances, a cost-benefit analysis can usually be done by one of our economists in a relatively short period of time.

With respect to (a), there is no specific language in either Section 12 or Section 15 of the CPSA that requires the use of cost-benefit analysis. Nor has there ever been a court ruling requiring that such an analysis be done pursuant to either of those Sections. However, Section 12, unlide Section 15, does contain the phrase "unreasonable risk of death, serious illness or severe personal injury" within the definition of an "imminently hazardous consumer product." In rulemaking contexts, courts have interpreted the phrase, "unreasonable risk", in such a way as to require a balancing of costs and benefits. Consequently, while there is no explicit requirement that cost-benefit analysis be done for an imminent hazard proceeding, I believe a court may well require, based on the statutory language "unreasonable risk," a balancing of costs and benefits in such a case. As far as (b) is concerned, I am satisfied with the statute as it now reads.

Question 17. Please indicate whether you would support or oppose the following proposed changes to the voluntary standards process of the Consumer Product Safety Act (CPSA) Section 7 and 9:

(a) Amend the CPSA Section 7 to permit interested persons the right to request immediate agency review of the Consumer Product Safety Commission (CPSC) reliance on voluntary standards on the grounds that the development of such standards is unreasonably delayed or that the standards themselves are deficient.

Answer. I would oppose this provision in that it is something that interested parties may already request under the Administrative Procedures Act. Under this Act, interested parties may petition the Federal Government to promulgate rules. If anyone has reason to believe that the Commission's reliance on a particular voluntary standard to address a hazard has been misplaced for any reason, that person may petition CPSC to proceed with the development of a mandatory standard addressing that hazard.

(b) Amend Section 7 as described in Question 17a and provide also that such determination by the CPSC may be subject to immediate judicial review.

Answer. I would oppose this provision as well since it diminishes the Commission's role as an independent regulatory agency. If the Consumer Product Safety Commission's (CPSC) decisions not to proceed with rulemaking are subject to routine legal review, the agency's responsibilities, in real terms, will have been shifted to the Judicial Branch and this is not what I believe the Congress intended when it created the Commission.

(c), Require that the CPSC may defer only to voluntary standards that have been developed through a consensus process providing for notice, opportunity for a participation, balance of voting interests to take account of all interested parties, and a procedure for review of such development process.

Answer. This would be an unwarranted intrusion by the Federal Government into a process that I believe is working very well at present. It is important to understand that the Federal Government as a whole, and the Commission as a federal agency, requires openness in all of the voluntary standards development activities in which it participates. Office of Management and Budget Circular A-119 contains such provisions as do the Commission's own regulations dealing with agency participation in voluntary standards (16 C.F.R. Part 1032). Existing provisions encompassed in procedures of organizations like ASTM and the American National Standards Institute (ANSI) already require consensus before a voluntary standard is pub-

lished. Thousands of voluntary standards have been published using the consensus process; explicitly requiring that it be used under the Consumer Product Safety Act is unnecessary. Only a few standards have been developed outside the ASTM and ANSI process, and these generally have been effective addressing the hazard.

(d) Amend Section 9 to require that a limitation be imposed on the amount of time the Commission has to publish a notice of proposed rulemaking following the issuance of an advanced notice of proposed rulemaking.

Answer. This would appear to be a simple solution to what many people believe is a complex problem. However, as can happen with simple solutions, unseen difficulties would arise. The Commission cannot know, in advance, the amount of time necessary to gather the best available data, analyze it and make a decision whether or not to proceed with the development of a rule. Setting arbitrary time constraints would transform the system into one whose objective is meeting a time dealing, rather than one whose objective is protecting the public interest. Such a decision could lead to less protection for consumer and/or place an unjustifiable burden upon industry. For this reason, this concept is one that I cannot support.

(e) Amend Section 9 to clarify that deferral to a voluntary standard may occur only where the standard actually exists.

Answer. This concept poses fewer problems than those outlined in the few previous questions. Experience has shown that a voluntary standard can be developed more quickly than a mandatory standard. However, the precise wording of this proposal would need to be examined carefully and it is worth noting that the Consumer Product Safety Commission (CPSC) staff may come to a conclusion that a voluntary standard is adequte before it is formally approved by the independent standards organization to which it was referred.

(f) Amend Section 9 to define more specifically the role the Commission and its staff should pay in the development of a voluntary standard.

Answer. Without a clearer understanding of the specifics, I am unable to give a definitive response. However, It should be reiterated that the Commission and its staff currently are guided by published policy (16 C.F.R. 1032 and 1033) on the role to be played in voluntary standards activities. In addition, the Commission has followed the guidance set forth in QMB Circular A–119. These provisions would appear to me to be sufficient, hence additional guidance provided in the Consumer Product Safety Act (CPSC) would be superfluous.

Question 18. Please indicate whether you would support or oppose the following provisions of the enclosed legislation (S. 1077 and H.R. 3456), introduced during the 99th Congress to reauthorize the Consumer Product Safety Commission (CPSC):

(a) Clarify the CPSC authority to disclose product hazard information to the CPSC contractors (Section 2 of S. 1077).

Answer. I am satisfied that Section 6(a) of the CPSC is working well at present and I do not believe it should be changed.

(b) Relax conflict-of-interest standards imposed on members of the CPSC chronic hazard advisory panels (Section 3 of S. 1077).

Answer. This reform would be highly desirable for the effective establishment and functioning of Chronic Hazard Advisory Panels (CHAPS). The Commission has often found it necessary to disqualify otherwise highly qualified nominees for these panels because they were employed by, or consulted for, firms that made or marketed consumer products totally unrelated to the subject matter of the panels. This reform would limit the prohibition to those associated with firms that made or marketed consumer products "that may be the subject of the panel's investigation."

(c) Impose a floor on the number of Consumer Product Safety Commission employees (Section 201 of H.R. 3456).

Answer. I do not believe that maintaining an adequate staffing level is best addressed by legislative action because it would limit management flexibility. Management must maintain the prerogative to increase or reduce staffing levels in order to respond to changes in the products under study and fluctuations in agency funding. For example, in 1986, the Commission met the Gramm-Rudman-Hollings sequestration target primarily by limiting staff hires. This option might not have been available to us had a legislative floor been in place. Similarly, our ability to rely on contact experts rather than in-house staff for short-term technical work could be adversely affected by such a provision.

(d) Repeal the cellulose standard (Section 301 of H.R. 3456).

Answer. As long as repeal of the cellulose standard was effected by Congress, I would have no objection. However, due to the resources that would be requried, I do not think the Commission should attempt to repeal the cellulose standard on its own. There are simply too many other projects more deserving of the Consumer Product Safety Commission's time, effort and money.

(e) Repeal the swimming pool slide rule (Section 302 of H.R. 3456).

Answer. Here again I am not in favor of the Commission taking the initiative to repeal the swimming pool standard for the reasons given on the cellulose standard. But I would not oppose the Congress doing so.

(f) Require the establishment and publication of the CPSC priorities and agenda prior to the beginning of each fiscal year and require a public hearing on such agenda and priorities (Section 304 of H.R. 3456).

Answer. I believe legislative provisions addressing CPSC's priorities and agenda are unnecessary. The Commission develops its priorities well before the beginning of each fiscal year and an important part of that process is a public hearing held specifically to solicit outside opinions and recommendations as to what those priorities should be. Each year, we receive numerous public suggestions which I consider extremely valuable since they contribute not only to the Commission's decisions on priorities, but also to much of our non-priority work on product hazards.

With respect to our annual agenda, or Operating Plan, I would note that, as in the case of priority project selection, all relevant Commission meetings are open to the public. Individuals and groups may comment on the discussions or the impending decisions in writing at any time. However, the Operating Plan evolves from, and almost always reflects, the decisions made by the Commission during consideration of its priority projects and adoption of its budget. Most of the changes are those resulting from Congressional adjustments (during the appropriations process) to the CPSC's budget request.

(g) Modify or study the regulation of fixed-site amusement rides (Section 201 of S. 1077 and Title 4 of H.R. 3456).

Answer. Fixed site amusement rides are a matter best left for state and local jurisdictions to regulate. However, I would favor the study proposal adopted by the U.S. Senate on July 24, 1985, dealing with fixed site amusement rides.

(h) Establish a procedure for Congressional review of newly promulgated Consumer Product Safety Commission (CPSC) rules (Section 16 of S. 1078 [not enclosed] and Section 303 of H.R. 3456).

Answer. As I have testified in the past, I favor inclusion of a legislative veto provision in the CPSC's authorizing statute. My preference would be for the joint resolution of disapproval approach since requiring action to specifically affirm rules might mean that some proposed rules would die from lack of action.

Question 19. Should the Consumer Product Safety Act (CPSA) be amended to define more specifically the qualifications required for appointment as a commissioner of the Consumer Product Safety Commission? If your response is yes, what additional qualifications should be adopted?

Answer. No.

Question 20. Please provide data regarding the number of Section 15 product recalls during the past three years and the amount and number of civil penalties assessed by the Consumer Product Safety Commission (CPSC) during the past three years.

Answer. The number of Section 15 product recalls initiated in each of the last three years is:

1984	106
1985	100
1986	95

The number and amount of civil penalties are:

	Number	Amount
Year:		
1984	5	$117,750
1985	2	835,000
1986	3	250,000

Questions Submitted by Senator McCain to Commissioners Dawson and Graham

Question 1. Do you perceive any problems or conflicts resulting from the initiation by the CPSC of litigation against the ATV industry, while at the same time the Commission is engaged in development of a voluntary ATV standard, in cooperation with the ATV industry?

Answer (Dawson). Without commenting specifically on the question of potential litigation, my response to this question is that the hazards of ATVs are so great that any legitimate activity undertaken, whether by the Commission alone or in cooperation with industry is appropriate and in the public interest. It is not unusual, for example, for the Commission to continue voluntary standards participation even while considering Section 15 actions against a manufacturer. I believe that if an industry understands that the Agency is ready and will to utilize its enforcement tools, it is more likely to undertake genuine efforts to resolve product hazards.

Answer (Graham). I see no problems or conflicts. Obviously, we are in an adversarial position in the enforcement action, while we must cooperate in the adoption of the voluntary standard. The Commission has certain objectives it wants to achieve. Since the voluntary standard route has not sufficiently addressed the safety problem, the Commission has authorized an enforcement action under Section 12 of the Consumer Product Safety Act (CPSA). While the Commission continues to work with the industry on Phase 2 of the voluntary standard, dealing with performance characteristics of ATVs, Section 12 action is viewed as the potenially most effective enforcement tool at this stage, and we are continuing our litigation effort. Our actions are not inconsistent.

Question 2. What is your view of state efforts to address safety problems associated with ATVs?

Answer (Dawson). To date, state efforts to address ATV safety problems have been spotty. But the Commission will continue to press aggressively for State action. We have gone on record in a letter to Governors (copy attached) that the Agency believes additional State action is needed and that we are ready to provide whatever assistance is needed. I intend to watch carefully in the next few months to see whether we can develop additional initiatives to aid States in addressing their unique responsibilities in this area.

U.S. CONSUMER PRODUCT SAFETY COMMISSION,
Washington, DC, January 28, 1987.

Hon. HAROLD GUY HUNT,
State Capitol,
Montgomery, AL.

DEAR GOVERNOR HUNT: We are writing to inform you of a serious safety problem presented by All-Terrain Vehicles (ATVs), and to enlist your state's assistance in taking measures that will help reduce the large number of injuries and deaths associated with these vehicles. ATVs are motorized off-road vehicles designed to travel on three or four low-pressure, balloon-like tires.

From the period January 1, 1982 through November 6, 1986, the Commission has been made aware of 644 ATV-related deaths nationwide, including 17 deaths involving ATVs in the state of Alabama. Furthermore, 47 percent of the victims were under 16 years of age and 21 percent were under 12 years of age. During this same period, the Commission staff has estimated that over 268,000 ATV-related injuries were treated in hospital emergency rooms nationwide. As with the fatalities, about half of the injuries occurred to children under 16 years of age.

On December 18, 1986, the Commission voted to pursue several courses of action designed to address this critical safety issue, including additional technical work addressing the performance characteristics of ATVs. However, this technical work will not be completed in the near future, and more importantly, several critical factors attending ATV use are more appropriately the subject of state or local activity. As a result, the Commission staff during the course of the Commission's investigation of the safety hazards associated with ATVs. During the course of this two-year effort, the Commission obtained an extensive amount of information concerning injuries and deaths; the unique handling characteristics of ATVs; minimum age recommendations; the need for wearing helmets and protective clothing; and the importance of not consuming alcohol, riding with a passenger or riding on paved roads. We have enclosed a copy of the Commission's December 18 decision, as well as a summary of our study of ATV safety issues and an update of injury and death statistics.

We believe that this information will be of interest to you in considering the need for appropriate or additional action in your State. More detailed information on this decision is available from the Commission's Headquarters and Regional Offices, and our staff can offer any further technical or administrative support which might be needed.

Your assistance and that of your colleagues in the Alabama State legislature will be invaluable in helping reduce the risk of injury to the riders of ATVs in your State. The Commissioners and staff of the CPSC look forward to addressing this

problem cooperatively with you and your staff. We would be pleased to discuss this matter with you further should you so desire.

Sincerely,

TERRENCE SCANLON,
Chairman.
ANNE GRAHAM,
Commissioner.
CAROL G. DAWSON,
Commissioner.

Answer (Graham). A review of State laws by CPSC staff found that less than half of the States have reacted to the increase in injuries and deaths from the use of ATVs through a variety of regulatory and educational options. Most States that have reacted to the problem may have done so on limited or little technical, epidemiological, and human factors analysis. The States that regulate ATVs follow no set pattern, and the effectiveness of their regulations, in terms of injury reduction, is unknown.

On December 18, 1986, the Commission directed the staff to prepare a letter on the Commission's behalf to be sent to all Governor's stressing the importance of ATV safety. The letters were mailed on January 28, 1987, providing the States with information, such as data on injuries and deaths, information concerning the unique handling characteristics of ATVs, minimum age recommendations, the importance of wearing helmets and protective clothing, and not consuming alcohol, riding with a passenger, or riding on paved roads. In those letters we also offer to assist the States by providing technical or administrative support if needed.

Question 3. Is there a need to more specifically define "imminently hazardous consumers product" as that term is used in Consumer Product Safety Act (CPSA) Section 12?

Answer. (Dawson). Although the Commission has historically not used this most powerful of all CPSA tools frequently, I believe any effort to re-define "imminently hazardous consumer product" is unnecessary. In my view, this section is reserved for the most serious of all product hazard and is to be used with great caution. It might impair the Commission's ability to take such actions where appropriate if the definition were to be narrowed.

Answer (Graham). No. The term "imminently hazardous consumer product" is necessarily broad to cover a variety of situations where use of the statute would be in the public interest. I prefer a broad, flexible definition, rather than one that is highly specific, because it enables the Commission to respond to a wide range of potential dangers to the public. A most specific definition might prevent enforcement action where protection of the public would be warranted.

Question 4. If the Commission size remains at three, would you recommend any changes to the Consumer Product Safety Act (CPSA), such as the number of Commissioners required to constitute a quorum?

Answer. (Dawson). Yes, as I have stated publicly, I believe that, should the Commission remain at its current level of three, it makes sense to change the CPSA to require a quorum of two, rather than the present three, to conduct Agency business. Further, I do not agree with the Chairman's assertion that one of those two members should be the Chairman. Such a requirement would effectively prevent the other two members of the Commission from taking action in the absence of the Chairman. I do not believe that is what Congress intended.

Answer (Graham). Yes. As long as the Commission structure remains a three member body, I strongly favor changing the quorum requirement to two members rather than all three.

Section 4(d) of the Consumer Product Safety Act (CPSA), anticipating a five member Commission, states that ". . . three members of the Commission shall constitute a quorum for the transaction of business." Current appropriation language limits us to funding no more than three Commissioners, so now all three must always be present to conduct business. The present quorum provision has the practical effect of enabling one Commissioner to single-handedly block a majority of the Commission from taking any significant action with which that Commission member disagrees.

If the Commission is to be limited to three members, the statute should also be changed to indicate a quorum requirement of two. Such an action is imperative if the Commission is to conduct its business in an expeditious manner.

In addition, I strongly disagreed with the Chairman's recommendation that one of those two members should be the Chairman. Under that scenario, if the Chairman

were absent, the Commission would not be able to conduct business. That is exactly part of the problem we have faced for the last year. Further, Congress provided for a Vice Chairman to act in the Chairman's absence.

Question 5. If the CPSC were restructured as a single administrator Agency, would you recommend that it remain independent or should it be merged with another Agency?

(a) If Independent, under what circumstances should the administrator be subject to removal by the President?

(b) If incorporated into another Agency, with an administrator subject to confirmation by the Congress, under what circumstances should the administrator be subject to removal by the President?

Answer (Dawson). I believe that remaining independent is important for the mission of the Agency since it provides visibility and accountability, both for the public and the Congress.

(a) My inclination would be to suggest that a single administrator of an independent Agency should be subject to removal by the President under the same circumstances currently identified in the CPSA—namely only for malfeasance or neglect of duty.

(b) My response to this question is the same as to Question 5(a). Removal should be made subject to the conditions prescribed in the statute already—malfeasance or neglect of duty.

Answer (Graham). Although I believe, and have stated publicly, that there are significant benefits for supporting a collegial structure, I feel it is prudent to review the merits of the Department of Health and Human Services' draft bill, the "Consumer Product Safety Act Amendments of 1987" before I would make such a recommendation.

(a) The CPSA currently provides that the Chairman and Commissioners of the CPSC can be removed only for neglect of duty or malfeasance in office. I would recommend applying that same language to a single administrator of the CPSC if one were to be appointed.

(b) As stated in response to Question 5(a) I would recommend that causes for removal by the President of the Administrator be identical to those that currently apply to the Chairman and Commissioner of the CPSC—neglect of duty or malfeasance in office.

Question 6. If the CPSC were to be converted to a single administrator Agency, when should such a conversion occur and what steps should be taken to ensure a smooth transition?

Answer (Dawson). Since I do not support the idea of converting the Agency to a single administrator, I have not given much thought to the need for steps to ensure a smooth transition. In general, it seems rational to provide for a time period of at least two years to accomplish a genuinely orderly transition.

Answer (Graham). Since I support maintaining a collegial structure, I have not focused on what steps would need to be taken for an orderly transition if the CPSC were to be converted to a single administrator Agency. However, in general, I believe the transition should be contingent upon the confirmation of the single administrator or a time period of no more than six months, whichever would come sooner.

Question 7. Should cost-benefit analysis such as that required by CPSA Section 9 also be considered by the Commission in Section 12 and/or Section 15 proceedings?

(a) In your view, is such consideration in Section 12 and/or Section 15 proceedings currently required?

(b) Should the CPSA be modified to address the use of cost/benefit analysis in Section 12 and/or Section 15 proceedings?

Answer (Dawson). The use of cost/benefit analysis in compliance activities is a subject of debate within the Commission. While final determinations are yet to be made, I will offer some preliminary thoughts: It is clear that a formal, mechanistic, cost/benefit analysis application to most compliance issues is not required. However, the staff and Commissioners routinely expect economic data to be provided when serious compliance issues are discussed. Whether or not such data need to be in the form of a monetary analysis is the subject of dispute. I am not an economist, but I believe the Commission needs to clarify its policies in this regard—both to assure that it receives adequate data prior to decisionmaking, and to avoid any misplaced public perception that it considers economic issues above protecting the public. As a decisionmaker I would welcome rational, relevant economic data, but to ensure that the public's health and safety remains our foremost consideration, any application of formal methodologies to compliance activities should be carefully considered.

(a) No, I do not believe that the statute requires such cost/benefit analysis in cases where a product hazard is a clear threat to public health and safety. If in pre-

paring to litigate under Section 12, our attorneys advised that such an analysis should be prepared, then of course it could be done as a matter of policy. At the same time, the simple answer is that it is not currently required.

(b) I believe the statute is adequate as written. Neither a requirement nor a prohibition would be in order. I beleive that individual cases and overall Commission policy should dictate when and if formal cost/benefit analysis is appropriate.

Answer (Graham). Based on my service as a Commissioner it is very obvious to me that far and away the most productive tool the Commission has is Section 15 of the CPSA. It is a proven life saver. This answer addresses both Questions a and b.

A review of Commission actions under Section 15 shows that since 1984 over 580 reports have been received, over 35.2 million units of products have been involved in recalls or other types of corrective action, and almost 7 million product units being corrected. These are products that to varying degrees did, or could have, created serious injuries. Because of our investigations under Section 15 and the problems the Commission uncovered, there are many manufacturers, importers and distributors that have corrected problems *voluntarily* because a manufacturer of a similar product agreed to recall a product.

I believe that Section 15 investigations and recalls serve to motivate firms to manufacture safer products. I know that Section 15 activities have resulted in voluntary standards being issued or improved. For example, the Compliance staff required several manufacturers of clamp lamps to change the sockets from metal to an insulating material to prevent electrical shocks. Once this was done, the voluntary standard was modified to require the use of insulated sockets. There are many examples including pressure washers, ceiling fans, squeeze toys, mesh sided cribs, accordian gates and metal chimneys.

To require that corrective actions meet a detailed cost/benefit analysis and balancing test would seriously jeopardize the most effective tool the Commission has at its disposal to reduce injuries and deaths related to consumer products. Moreover, it would not measurably improve the Commission's decisionmaking in these matters.

Sections 12 [1] and 15 of the CPSA do not explicitly require the use of cost/benefit analysis. When Congress added a requirement for cost/benefit analysis to the Commission's rulemaking provisions in the 1981 amendments, Sections 12 and 15 were not modified. The reasons for leaving cost/benefit analysis out of Sections 12 and 15 are both pragmatic and logical, reflecting the purpose of these sections in the statutory scheme.

Section 9 governs prospective standards or bans where comprehensive industry-wide judgments about safety are being made. Many aspects of a particular industry's products may be subjected to design and/or performance requirements. Data on injuries and costs is usually available always in the context of a rulemaking proceeding. In contrast, Sections 12 and 15 deal with extremely hazardous products that have already been manufactured and pose an immediate threat to the public. Usually, relatively simple defects—rather than complex performance standards—are addressed. Hazard and cost data are usually limited. If voluntary action is not taken, an adversarial, adjudicative proceeding determines the facts.

Under Section 15(d), the Commission is empowered to recall products determined to contain a defect which presents a substantial product hazard. This can only occur after affording interested persons an opportunity for a hearing. The only criteria for determining whether corrective action should be taken under Section 15(d) is whether there is a substantial product hazard and whether corrective action is in the "public interest." Since the creation of the CPSC, the Commission policy has been to correct all substantial product hazards through notice, repair, replacement or refund of the purchase price of the product. Since the vast majority of corrective actions are voluntary, this appears to have been industry's position as well.

Proponents of cost/benefit analysis for Section 15 matters argue that the term "public interest" used in Section 15(d) means that any corrective action must pass an economics cost/benefit litmus test. I think this position not only reads requirements into the statute that are not there, but it also makes poor policy. Ordinarily, very little data is available in Section 15 matters on the costs and even less is available on the benefits of individual product hazards until after a full discovery period and hearing. Nonetheless, what information is available certainly is a consideration

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[1] Section 12(a) of the CPSA, states that an "imminently hazardous consumer product" is one that presents an "imminent and unreasonable risk to death, serious illness, or severe personal injury." Section 12(b) authorizes a court to order "such temporary or permanent relief as may be necessary to protect the public from such risk." Corrective action must "protect the public;" it need not meet a cost/benefit test. Section 12 has been used only a few occasions in the Commission's history.

during the decisionmaking process. To impose on the Section 15 process an analytical technique that requires the analyst to assign a range of estimated and assumed numbers to a variety of unknowns merely to generate a numerical analysis makes very little sense. It does not improve the quality of decisionmaking; it merely makes the analysis—now reduced to numbers—appear to be more "objective."

Furthermore, cost/benefit analysis ignores many of the fundamental non-quantifiable benefits of corrective action under Sections 12 and 15:

(1) Recalls give consumers a chance to take action to protect themselves. This enhances their faith in industry and government. They can have faith that someone is trying to protect them from injury.

(2) Requiring firms to correct defective products may motivate them, or their competitors, to make safer products in the future, and to improve product quality.

(3) Section 15 actions may motivate improvements in industry standards (as noted earlier).

These paramount benefits are not quantifiable and are, therefore, ignored in cost/benefit analysis. Nevertheless, they are the foundation upon which the Commission's recall policy stands. Currently, the Commission, through its hazard priority classification system, determines the extent of corrective action based on the seriousness of the hazard. This approach takes the statutory criteria and provides further objective criteria for decisionmaking.

Subjective considerations may enter into the consideration of even the most "objective" criteria. However, there is benefit to the public in not pretending to apply "objective" numerical criteria through a cost/benefit approach, while intentionally or unintentionally manipulating that "objective" criteria with subjective estimates and assumptions. The use of such a mechanistic formula by the Commission might encourage firms to generate such analyses to justify actions that their management perceives to be in their immediate self-interest. This type of analysis has caused courts and juries to award huge punitive damage judgments against manufacturers who coolly calculated that they could make more money by producing a hazardous product that they would pay for the suffering and loss of life and limb that decision caused.

Question 8. Please indicate whether you would support or oppose the following proposed changes to the voluntary standards process of CPSA Sections 7 and 9:

(a) Amend CPSA Section 7 to permit interested persons the right to request immediate Agency review of CPSC reliance on voluntary standards on the grounds that the development of such standards is unreasonably delayed or that the standards themselves are deficient.

(b) Amend Section 7 as described in Question 8(a) and provide also that such determinations by the CPSC may be subject to immediate judical review.

(c) Require that the CPS may defer only to voluntary standards that have been developed through a consensus process providing for notice, opportunity for participation, balance of voting interests to take account of all interested parties, and a procedure for review of such development process.

(d) Amend Section 9 to require that a limitation be imposed on the amount of time the Commission has to publish a notice of proposed rulemaking following the issuance of an advance notice of proposed rulemaking.

(e) Amend Section 9 to clarify that deferral to a voluntary standard may occur only where the standard actually exists.

(f) Amend Section 9 to define more specifically the role the Commission and its staff should play in the development of a voluntary standard.

Answer (Dawson):

(a) An additional statutory provision for Agency review of its decision to rely on a voluntary standard would be unnecessary, since a right to petition the Agency to proceed with mandatory rulemaking already exists.

(b) It is my understanding that judicial review is already available under the Administrative Procedures Act for final Agency action.

(c) Although I support measures that would provide for consensus standards-developoment, adequate public notice, and full participation by consumers, amending the statute in such a manner might unduly hinder the Agency from using all available means to address safety issues. In general, where the private standards-setting process is working well, the Federal government should allow it to continue without intervention. Many standards-setting procedures already provide for public participation and this is desirable. To impose additional requirements through amending the CPSA would, I fear, interfere with the Commission's effort to achieve adequate public safety levels by working with the private sector.

(d) Although I sympathize with the goal of such a proposal, i.e., to address safety issues in a timely manner so that the public is protected, I believe that imposing

time limitations would unduly constrain the Agency and might lead to imprudent or hasty decisionmaking. Rather, I believe that Congress, through its oversight process, can give impetus to Commission action where such action may seem unduly slow.

(e) There may be some benefit to such an approach, though the language would need to be carefully drafted. I have given a great deal of thought to the whole area of the Commission's involvement with, and deferral to voluntary standards. Some statutory amendment to clarify the government's responsibility in the process might be desirable. I would prefer to see such activity restricted to product areas which present a clear hazard to the public; in other words, the Commission would have to make a preliminary determination that a specific consumer product presents a risk of injury that demands particularly prompt action. To provide additional background regarding my thinking on this matter, I am attaching a memorandum to the Commission which I submitted in January, 1985. One of the benefits or using such procedures is that manufacturers would take their safety responsibilities more seriously if there were a more formal deferral process. The other benefit is that if the Commission limited its participation in voluntary standards to products which present some defined level of unreasonable risk of injury, our resource allocation problems would be easier to resolve.

(f) Since the Commission already has a regulation in place governing its staff's role in working in voluntary standards development, amending the statute in this regard may be unnecessary. Alternatively, perhaps the Commission should review and amend those regulations (16 CFR 1031 and 1032). I would be happy to address this question in greater depth if there are specific recommendations the Subcommittee wishes to make.

Answer (Graham):

(a) I do not believe a statutory amendment is necessary or appropriate to give interested persons specific authority to request immediate Agency review of CPSC reliance on voluntary standards on the grounds that the development of such standards is unreasonably delayed or that the standards are deficient. To the extent the Commission decides to rely on a particular voluntary standard, this decision is already made by the Commission. Any person already has the right to request that the Commission take a particular action such as engaging in rulemaking. It would appear unnecessary to provide an additional statutory right to request the Commission to take particular action.

(b) To the extent the Commission formally decides not to take a particular course of action and that decision is final Agency action, any member of the public may already seek judicial review of that decision under 5 U.S.C. § 702. Thus, there appears to be no reason to amend the statute to include a specific provision authorizing lawsuits of the type described.

(c) I believe an amendment that would allow the Commission to defer only to voluntary standards developed through a consensus process would not be in the public interest. While I support issuance of voluntary standards through a consensus process that allows an opportunity for all points of view to be heard and considered, it would be self-defeating to prohibit the Commission from relying on a voluntary standard that adequately addresses an unreasonable risk of injury and for which there will be substantial compliance simply because of the method or procedure used to develop that standard. The primary goal of the Commission is to protect the public from unreasonable risks of injury associated with consumer products. The Commission should be allowed to use any existing standard to accomplish this goal.

(d) While Congress may wish to provide guidance on timeframes within which a notice of proposed rulemaking should follow an ANPR, I do not believe a statutory amendment is necessary. It is the Commission's responsibility to determine when to proceed with the various stages of rulemaking. To the extent the Commission is slow to act, Congress through its oversight responsibility can address that problem. The problem with mandatory timeframes is that they do not give the Commission the flexibility it may need in any particular situation.

(e) I believe this proposal has merit. Under the current procedure, the Commission in its ANPR invites any person to submit an existing voluntary standard, or a statement of intention to modify or develop a voluntary standard. Where no adequate voluntary standard exists, the Commission is not required to accept an offer to modify or develop a voluntary standard. Rather, it may proceed to the issuance of a proposed rule. Nonetheless, if the suggested amendment were adopted, I believe it would give voluntary standards organizations and industry members increased incentive to issue a voluntary standard before the Commission determines it necessary to start a rulemaking proceeding. I believe industry members might review the adequacy of voluntary standards more frequently and upgrade those standards routinely if the suggested amendment were enacted.

(f) I believe a statutory amendment requiring the Commission to define more specifically the role the Commission will play in the development of a voluntary standard is unnecessary. The Commission currently has in place a regulation concerning employee membership and participation in voluntary standards organizations, 16 C.F.R. Part 1031. This regulation explains how the Commission staff will participate in voluntary standards activities. If necessary the Commission could amend this regulation or issue another regulation concerning its involvement in voluntary standards activities. This would be less drastic than a statutory amendment.

Question 9. Please indicate whether you would support or oppose the following provisions of the enclosed legislation (S. 1077), portions of S. 1078, and H.R. 3456 introduced during the 99th Congress to reauthorize the CPSC:

(a) Clarify CPSC authority to disclose product hazard information to CPSC contractors (Section 2 of S. 1077).

(b) Relax conflict-of-interest standards imposed on members of CPSC chronic hazard advisory panels (Section 3 of S. 1077).

(c) Impose a floor on the number of CPSC employees (Section 201 of H.R. 3456).

(d) Repeal the cellulose standard (Section 301 of H.R. 3456).

(e) Repeal the swimming pool slide rule (Section 302 of H.R. 3456).

(f) Reqiuire the establishment and publication of CPSC's priorities and agenda prior to the beginning of each fiscal year and require a public hearing on such agendas and priorities (Section 304 of H.R. 3456).

(g) Modify or study the regulation of fixed-site amusement rides (Section 201 of S. 1077 and Title 4 of H.R. 3456).

(h) Establish a procedure for Congressional review of newly promulgated CPSC rules (Section 16 of S. 1078 and Section 303 of H.F. 3456).

Answer (Dawson):

(a) Yes, I support clarification in this regard.

(b) Yes, I would support such a provision. In the past, the Commission has found it difficult to obtain the services of qualified nominees given the present limitations in the law.

(c) No, I do not favor such a provision. I fear it would unduly limit the ability of the Commission to respond to management priorities.

(d) According to the Commission's most recent report to Congress on this standard, (for August 25, 1986 through February 24, 1987), the Agency has not inspected any manufacturer of cellulose insulation or collected any samples of insulation. No State has requested testing of cellulose insulation during that period. Inasmuch as there does not appear to be a pressing need for continued enforcement of such a standard, and since the American Society for Testing and Materials currently has a cellulose insulation standard, perhaps the time has come for repeal. If such repeal could be accomplished legislatively, rather than through the Agency's rulemaking procedures, I would have no objection to such a provision. If the Agency's staff identifies any major problems in this area in the future, CPSC still has other enforcement tools available to deal with them.

(e) I do not have sufficient information to give a yes or no answer to this question. However, if the Congress does decide to repeal this standard, the Commission would want to take immediate measures to assure that an adequate voluntary standard could take its place.

(f) Currently, the CPSC does hold public hearings on the establishment of its priorities. Recommendations are received from a variety of public sources. In addition, the Commission has a set of regulations at 16 CFR 1009.8 governing its priority-setting role.

If the question regarding agenda refers to development of the Agency's Operating Plan, then that procedure is also public under provisions of the Sunshine Act. I would note that 16 C.F.R. 1009.8(b) defines and proscribes the general policies under which the Commission operates. The regulation specifically requires that the Chairman keep the Commission advised of, and seek its guidance on, significant problems, policy questions and solutions throughout the planning cycle leading to the development of budget requests and operation plants. It also requires that priorities be established by majority votes on all requests for appropriations, an annual operating plan and any revisions thereof. Given the fact that the majority of the Commission raised objections to the Chairman's official submission of the 1988 budget to Congress and that in one instance, the Chairman failed to abide by a majority vote on the 1987 operating plan, this provision may need to be strengthened legislatively.

(g) I have in the past indicated my support for the proposal to study the need for a Federal role in the fixed-site amusement ride area. However, I do not support an immediate proposal to grant overall jurisdiction to the CPSC for all fixed-site amusement rides, since I believe the CPSC staff is not equipped to deal with this

type of safety problem. Although there are areas of Federal-state cooperation that are mutually beneficial, I believe that this may be an area of regulation that is best left to the States and localities.

(h) As I have stated in the past, I believe that Congress has a right and a duty to ensure that Federal Agencies are legitimately exercising power delegated to them. Whether Congress should supervise rulemaking, through its oversight function, through a veto mechanism, or some combination thereof, is a decision best made by Congress itself. If Congress should decide that legislative veto of Agency rulemaking is necessary, I would hope that the mechanism chosen would not unduly delay legitimate rulemaking proceedings.

Answer (Graham):

(a) Yes. This should be supported. This has been a problem area and any clarification would be helpful.

(b) This reform would be highly desirable for the effective establishment and functioning of Chronic Hazard Advisory Panels (CHAPS). The Commission has often found it necessary to disqualify otherwise highly qualified nominees for these panels because they were employed by, or consulted for, firms that made or marketed consumer products totally unrelated to the subject matter of the panels. This reform would limit the prohibition to those associated with firms that made or marketed consumer products "that may be the subject of the panel's investigation."

(c) In a perfect world I would not support floors in personnel levels. Normally, the flexibility to utilize monies wherever most needed to address safety issues would be most desirable. However, given the present circumstances I do support a floor on the number of CPSC employees as long as adequate funds are appropriated. This would prevent cutting personnel to unacceptable levels. It would also provide for the filling of critical vacancies more expeditiously.

(d) I believe there is still a need for the cellulose insulation standard. Although we have seen a reduction in demand for this material since the standard was adopted in 1978, a residential market for cellulose insulation continues to exist. As of 1984 approximately 300 firms still manufactured cellulose insulation, and the Commission continues to receive reports that it is involved in home fires. The Commission has no information as to whether manufacturers conform to the provisions of a related voluntary standard developed by the American Society for Testing and Materials. In view of the situation, repeal of the mandatory standard would be premature.

(e) I would not support revocation of the swimming pool slide standard, even though a court has discarded the standard requirements for signs and labels. There is no voluntary standard in place for swimming pool slides and I believe that consumers should be afforded protection in this area.

(f) I believe legislative provisions addressing CPSC's priorities and agenda are not necessary. The Commission develops its priorities well before the beginning of each fiscal year, and an important part of the process is a public hearing held specifically to solicit outside opinions and recommendations as to what those priorities should be. Each year we receive numerous public suggestions. We consider them extremely valuable since they influence not only the Commission's decisions on priorities, but on much of our other work for addressing product hazards as well.

With respect to our annual agenda or Operating Plan, I would note that, as in the case of priority development, all Commission meetings regarding the plan are open to the public. They may comment on the discussions or the impending decisions in writing at any time. However, the Operating Plan evolves from and almost always reflects the decisions made by the Commission during the process described above. Most of the changes are those resulting from Congressional adjustments to our request during the appropriations process.

(g) At this point I would not support a proposal to grant the CPSC authority over fixed-site amusement rides. I believe this is an area of regulation better served by State and local jurisdictions.

(h) No. This is not necessary given the fact that Congress already has the prerogative to initiate review of rules without additional legislation.

Question 10. Should the CPSA be amended to define more specifically the qualifications required for appointment as a Commissioner of the CPSC? If your answer is yes, what qualifications should be specified?

Answer (Dawson). I believe it would be difficult to craft an adequate set of criteria by which to judge the qualifications for a Commissioner. In general, it is important that, in a collegial structure, there be an effort to achieve a balance in the backgrounds of its members. To some degree, the requriement that no more than three members (out of five) be of the same political party of the President is responsive to this goal. At one point during my preparation for confirmation hearings, I came

across this description of requirements of nominees, and I believe it is an excellent description of the type of individual which is needed for a decisionmaking body.

"Individuals appointed must: (1) by reason of background, training, and experience, affirmatively qualify for the office to which he or she is nominated, (2) display a temperament and ability for impartial decisionmaking; (3) demonstrate a commitment to and familiarity with the laws he or she will administer, (4) possess the character, reputation and integrity vital to insuring public trust and confidence, (5) exhibit a talent for leadership and executive management required to made these Agencies function effectively in response to public interest."

Answer (Graham). I do not believe that it is appropriate to require specific qualifications for appointment as a CPSC Commissioner. Prospective Commissioners' qualifications are considered by the President and the U.S. Senate during the nomination and confirmation process. Moreover, I am not aware of such a requirement being imposed for other Federal Agency appointments, including Commission members. I believe a diversity of backgrounds and qualifications strengthens the collegial process.

Senator GORE. The vote bell you have heard. We will have a number of other questions for the record. My colleagues are necessarily on the Senate floor voting, and they too may have questions for the record.

Again, I apologize for the procedure that we are forced to adopt by the unusual press of business over on the Senate floor. But at this point I am going to excuse this panel, and ask the next panel to come forward.

And right after this vote, and at the beginning of the next vote, we will come back and try to complete panel one, which is made up of Nancy Harvey Steorts, John Byington, David Pittle, and Stuart Statler.

If those four witnesses would come forward as a panel, I wish to thank the members of this panel for their testimony today, and we will stand in brief recess.

[Recess.]

Senator GORE. The subcommittee will come back to order.

Again, I will renew my standing apology for the circumstances on the floor of the Senate. I just voted twice and came back, and when this one is over, we will have a couple more votes.

For your information, in case anyone is interested, the pending question on the Senate floor is whether or not Senator Quayle has the right not to vote on the last vote, which was on the right of Senator Warner not to vote on the vote before that one, which was on approving the Journal that someone claimed he had read.

Anyway, it is one of those situations. It is getting like scoring bowling in the last three frames. You sort of have to know what you are doing.

All right, this is our first panel, Ms. Nancy Harvey Steorts, President of the Dallas Citizens Council; John Byington with Pillsbury, Madison & Sutro; David Pittle, Technical Director with Consumers Union; and Stuart Statler, Vice President of A.T. Kearney.

And I appreciate all of you being here. As I explained before, we would appreciate it if you would really summarize in your oral presentation. And without objection, your full statements will be included in the record.

And we will begin with Nancy Harvey Steorts, President of the Dallas Citizens Council. Welcome.

STATEMENT OF NANCY HARVEY STEORTS, PRESIDENT, DALLAS CITIZENS COUNCIL

Ms. STEORTS. Thank you, Mr. Chairman. It's nice to be back in Washington.

I am speaking as an individual today.

I am pleased and privileged to have the opportunity to participate in this authorization hearing for the Consumer Product Safety Commission.

My comments today come from my experience as chairman of the Commission from 1981 to 1984, and from my observations after leaving that post.

As this nation addresses the critical need to be competitive in the world marketplace, we can be proud of the fact that the United States has indeed been a world leader in the development of safe products, and in the education of our citizens in the safe use of those products.

Our dramatic progress in consumer product safety in the United States is an achievement which is shared by industry, consumers, and by government.

The U.S. Consumer Product Safety Commission has been the focal point of our nation's enlightened approach to product safety, an approach which has won the respect of leaders and citizens throughout the world.

As a member of the private sector since leaving the Commission two years ago, I have met frequently with business leaders from around the world. They always remind me of the fact that they continue to look to the United States for guidance and leadership on product safety issues and programs.

The 16-year history of this young and relatively small agency reflects the very evolution of the nation's consciousness of the importance of product safety, and a parallel growth of the responsibility of industry and its willingness to work cooperatively with the government.

In 1971 the Commission was born amid conflict and contentiousness, as the American consumer rightfully demanded safer products.

Just ten short years later, industry began to assume its new role in product safety more efficiently, more effectively, and certainly more credibly for government, industry and the consumer.

Examples of this new spirit are quite plentiful. During my administration two companies come to mind as being two that did what I considered a very admirable job in really dealing with serious consumer problems.

One was Johnson & Johnson, when we had the very serious rash of Tylenol capsule poisonings. They faced this problem headon. When they found that their tamper-resistant packaging did not meet the Commission regulations for child resistant enclosures, instead of engaging in lengthy expensive regulatory proceedings, J&J admitted to the Commission that there was a problem, and immediately proposed an acceptable solution.

Similarly, MacDonald's did the same thing when we found that one of their little toys did not meet one of our regulations. And those toys were taken out of the marketplace within a matter of days.

Both of these companies acted responsibly; saved themselves and taxpayers millions of dollars in legal fees; and most importantly, moved quickly to protect the American consumers. This would not have been possible under the adversarial conditions which dominated the Commission's relationship with industry during the 1970s.

Mr. Chairman, product safety has been institutionalized in this nation because of the work of the Commission, and because of the new spirit of cooperation which has been carefully nurtured.

Having said this, however, I must hasten to add that the work of the Consumer Product Safety Commission is far from finished. It disturbs me greatly that over the last two years, the primary public focus on the agency has too often not been on its mission to make the marketplace safer for the American consumer.

I fear at this point that product safety has become politicized. In December, 1984, I issued my final report as chairman of the Commission to the President of the United States. In that report I made several recommendations concerning the future of the Commission, including one that the five Commissioners be replaced by a single Administrator.

I believe the time has now come to take this important step. While it is true that there existed healthy differences of opinion and style of management among the commissioners during my tenure as chairman, and indeed, throughout the history of the Commission, the agency did not lose sight of its mission.

I fear that this may no longer be the case. For this and other reasons, a single administrator with technical expertise and a consumer orientation is needed to put the Consumer Product Safety Commission back on course, and to ensure that its business is being conducted efficiently and fairly.

The right individual can provide the leadership and sound management necessary to the Commission's achievement of its major objectives. Even if it is determined that the Commission be made part of a larger agency, the direction and identity provided by a single administrator, whose appointment should be confirmed by the Senate, would be essential.

Among those objectives are the effective monitoring of compliance with voluntary standards and the enforcement of those standards. As I said many times as Chairman of the Commission, I prefer the voluntary, cooperative approach to solving product safety problems. However, when this approach does not yield results, the Commission must be prepared to regulate. While it must regulate fairly and efficiently, it must regulate if it is to fulfill its purpose for being.

Also, I feel very strongly about the proposed cost-benefit analysis.

I'm concerned about this. I feel that this is impractical, and would greatly hinder the work of the Commission. To require this step, while consumers risk possible injury and even death is not justifiable, and this is based on my experience as Chairman.

If anything, we must make it easier for the Consumer Product Safety Commission to do its job. And there are many important challenges which remain before the Commission that I think are still unanswered.

I am also particularly concerned that the Consumer Product Safety Commission spend more of its resources on the health related problems, such as indoor air quality, carcinogenic substances, and other continuing threats. The Consumer Product Safety Commission has not been given adequate resources to address these issues fully. The time has come to either adequately fund and support these health-related programs or to move them to other Federal agencies, where they will receive the attention and resolution which the American consumer expects.

Mr. Chairman, we are at a critical turning point in the history of consumer product safety in the United States. I am here to tell you that the concept and mission of the Consumer Product Safety Commission are not obsolete. The product safety problems we face are more complex and perplexing than ever before. If we are to resolve them, we must act now to ensure that this agency which has served Americans so well does not get caught up in the web of political rhetoric. To this end, we must review its current structure and delivery system to guard against the backsliding from the progress we have made.

My final report to the President outlined the means by which we can ensure this. I would ask that a copy of this report be entered into the record.[1]

The U.S. Consumer Product Safety Commission has achieved the institutionalization of product safety in this country. I urge you to act in such a manner that this nation never loses the benefit of its work.

I hope that this subcommittee will take a look at this testimony of those of us that have been here before, and I do feel that the future of the Consumer Product Safety Commission is critical, and it must not be stopped.

Thank you.

Senator GORE. Thank you very much.

We would like to hear now from John Byington with the Pillsbury law firm located here in Washington. Mr. Byington, it is nice to see you again. If you could summarize your testimony, the full statement will be in the record.

STATEMENT OF S. JOHN BYINGTON

Mr. BYINGTON. I would note for the record I am with the law firm of Pillsbury, Madison & Sutro.

Senator GORE. I am sorry. Indeed, that is Pillsbury, Madison & Sutro, Washington, D.C. Sorry about that.

Mr. BYINGTON. I just did not want the Pillsbury company to have a problem with that.

And I do speak as an individual. I have a very short statement, and it says that I reviewed the April 1987 GAO report on the Consumer Product Safety Commission and GAO's findings that CPSC's administrative structure could benefit from change is consistent with my very long-held and often publicly stated position that CPSC would significantly benefit by changing its administrative structure to a single administrator.

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[1] The report was not reproducible.

I frequently testified in favor of such a change in CPSC prior to and during my tenure as chairman in 1976 to 1978, and in general I concur with the GAO report and its findings. And I only hope that the 100th Congress will make the change to the single administrator so that an orderly transition can take place during the 101st Congress.

That is the end of my prepared statement. I would be happy to answer questions.

If I could have one minute, I would like to add something based upon what has happened here this morning, listening to what is going on. And I would only suggest that the discussion of ATV's this morning is kind of deja vu since the early days of this agency.

All you really need to do is to change ATV's for lawn mowers or swimming pool slides or match books or cellulose insulation, and you come back to the same problem of how do you deal with a regulatory approach when you are trying to deal with mandatory standards versus voluntary standards?

And I really believe that Congress needs to address both the administrative structure of the agency as well as the rulemaking, standards setting procedure of the agency.

Senator McCain's suggestion earlier this morning about the need to repair the system I think is directly on target. I think you are consistently faced, as this agency has been since its inception, with the choice between the mandatory standards and the phenomenal length of time it takes to do that and voluntary standards and the so-called lack of enforcement, lack of Federal preemption, and the other things that come with voluntary standards.

So I believe that there are many mechanisms available under evolving techniques of alternative dispute resolution, and I think we are all aware of what is going on in that whole arena as it relates to trying to solve all kinds of disputes without dragging them through lengthy legal proceedings and through some form of negotiated settlement.

So the bottom line is I believe some Congressionally supported creative solutions need to be attempted by the agency. But that involves some risk taking and that is difficult enough to find in politics today to start with, much less finding two people who will vote with you, which I think is a further argument for a single administrator.

Thank you, sir.

Senator GORE. Thank you very much.

Mr. R. David Pittle, Technical Director with Consumers Union, located in Mount Vernon, New York.

STATEMENT OF R. DAVID PITTLE, TECHNICAL DIRECTOR, CONSUMERS UNION

Mr. PITTLE. Thank you, Mr. Chairman.

I really have enjoyed coming down here this morning. It is like a breath of fresh air. Not since Warren Magnuson sat where you are sitting now so many years ago and questioned me about my intentions and my qualifications for being appointed to the Commission, have I heard such a board understanding and a deep commitment to the purpose of this legislation.

Senator GORE. Thank you. And you are not limited by the summary instructions.

Mr. PITTLE. I do have a lengthy statement, which I will submit for the record. I will read through just part of it now.

As a member of the original Commission, I speak to you as someone who spent nine years weighing the many complex factors involved in establishing product safety standards and bans, recalls of substantial hazards, policies to encourage voluntary action by industry, comprehensive compliance programs, and campaigns to inform and educate the consumer.

During that time, four different Presidents resided in the White House and numerous Senators chaired this committee. Some things changed and some things stayed the same.

For example, the basic mission of the agency has stayed the same, and every Congress that has ever reauthorized this agency has reaffirmed its clear and unmistakable purpose: to reduce and eliminate unreasonable risks of injury to the consumer.

There has been no equivocation, and rightly so. The pain and suffering from accidents involving chainsaw kickback, toxic formaldehyde vapors, flammable children's pajamas, explosions caused by leaking gas valves, unsafe infant safety gates, unstable ATV's, and so on is devastating.

Promoting product safety is so important that it should transcend politics. The pain and suffering, the effect on the human body, is the same regardless of who is in the White House or who sits on the Commission.

I note with pleasure that some things have changed for the better. In particular, the number of injuries from lawn mowers and children's sleepwear and many other hazards that have been regulated by the Commission have been reduced.

On the other hand, some things have changed for the worse. The Commission staff and budget have suffered enormous cutbacks over the past six years. I cannot forget, and I urge you on the subcommittee not to forget, that former OMB Director Stockman vigorously declared that the Administration's first priority was to abolish this agency and, failing that, to slash its budget.

He was open about the Administration's motives. They cut the CPSC back because they disliked it, not because they were contributing to a reduction of the national deficit. And if anyone doubts this, let me read you a quote of his regarding both the FTC and the CPSC:

> They have created this whole facade of consumer protection in order to seize power in our society. I think part of the mission of this Administration is to unmask and discredit that false ideology.

I recite this history because the actions of the current Commission reveal that little has changed about the motives of the Administration or some of its appointees. The agency has promulgated no standards, nor has it imposed any bans. Rather than pressing for adequate voluntary standards, the Commission accepts whatever action industry offers, and it does not defer to voluntary standards, it grovels. And its chairman spends his days dreaming up new ways to undermine the CPSC's recall program.

And the comments that I have heard this morning, where Chairman Scanlon indicated that the first approach is to seek a voluntary action, and if that does not work then to set up a mandatory approach, is completely misguided. That is the inappropriate way to go, and Congress never intended that that be the case.

I was the acting chairman of the Commission when that amendment was enacted in 1981. The Commission does not have a mandate to rely on mandatory standards first.

Rather, what it is supposed to do is, when it has a completed mandatory option and there is an adequate equivalent voluntary standard, then it should defer to the voluntary program. But if you do not have a mandatory standard in your hand, there is no incentive to force progress—there is no incentive for industry to come up to speed. Your comments, Mr. Chairman, are right on target on that issue.

Regarding the switch to a single administrator, I think this is one of the topics that seems to be commanding the most attention. I discussed this issue at length in the past and will submit some comments for the record, but I want to make two points now.

Nothing in this agency's current structure prevents it from acting effectively. It has the right mission and it has ample authority. What it lacks is resources and leadership.

I read the GAO report on agency structure and I have to say, with all due respect, that there is absolutely nothing new and nothing convincing in it to warrant a change. I still support collegiality and independence.

And let me explain, I think the most important feature of a collegial body is that the Commissioners of equal policy stature debate the complex issues before the agency. And I am sitting here with people that I have arm-wrestled with for nine years, and I can guarantee you that the decisions that came out of the collective wisdom of this group was always better than any one of us would have been alone.

In my opinion, the quality of these decisions is always enhanced by the collegial process.

I strongly suspect that one of the major reasons currently being advanced for abolishing CPSC's collegial structure is that the Commissioners are constantly squabbling. And while I certainly regret that so much of what goes on these days seems to involve personal animosity, I can see no basis for changing the agency just because the Commissioners disagree with each other.

Disagreement is unpleasant, but it is usually healthy. And I find no fault with robust, vigorous policy clashes.

Mr. Chairman, you sit in a body with 100 independent decision makers of equal stature. I have seen Senate debates that I would call lively, but others might call chaotic. But what we see is not always calm and orderly, but I prefer what I see to a Senate of one.

I suggest the same principle applies to the CPSC, because it too must decide matters of pressing national importance, complex factors, and necessary tradeoffs, and never enough information. To paraphrase Winston Churchill, it is a lousy system except for the alternatives.

And I must underscore what is the most overriding concern in this whole debate: Good regulatory decisionmaking needs independ-

ence from narrow expedient political pressure. As I said before, pain and suffering from dangerous products respects no political boundaries. And decisions to reduce pain and suffering, I submit, should not be controlled by political considerations.

Health and safety agencies are not as independent as, let us say, the Federal courts, and I do not think they should be. But there must be enough independence to bar the overruling of a regulation fashioned by health and safety officials, developed over the course of several years, by a simple phone call from a distant political appointee who can invoke political convenience at the cost of consumer safety.

And I urge you to resist any efforts to fold this agency into a larger one, because if you think that ATV's gets hidden in this agency, consider the case where it is just a number on the annual report of a much bigger agency.

I think that product safety needs to be highlighted, it needs to be up front, and it needs its own banner.

Regarding the use of cost-benefit analysis in recalls, the agency's proposal is misguided. It should not be going in that direction, and I agree with your earlier comments.

I think the current Act needs an amendment to put a floor on the commission's personnel complement. The staff size is being slashed every year, and I urge this committee to put in an amendment that will limit OMB's constant weakening of the agency.

I also believe that section 6(b) should be repealed. My prepared statement goes in detail. It is inconceivable that a health and safety agency has to censor the very product safety information that consumers need. And the people who seem to be calling for no regulation, who stress giving the consumer the information and let them make up their own mind, are the very same people who argue against giving out the information because it might do a disservice to a company.

There is one last issue that I wish you would take up during your oversight hearings, and that is that the current chairman and the rest of the Commission seems to be in the verge of requiring that, when the compliance staff goes out to inspect a company to see if they are complying with voluntary standards and a company refuses entry, that the staff to come back to the Commissioners to seek approval to obtain a warrant for entry.

That is a ridiculous approach. If the agency is going along with a voluntary program, then the company ought to let the compliance staff inspect to see if they are complying with the standard. By the Commission requiring the staff to come back for approval for a warrant, in my opinion, weakens further their approach to making products safer.

And finally, regarding fixed site amusement rides. I think this agency's authority and jurisdiction over fixed site amusement rides should be restored. Either the Waxman bill or the soon to be introduced bill by Senator Simon would be acceptable. Neither restores rulemaking authority, but both would restore the recall authority.

And in conclusion, the product safety agenda is unfinished. Too many consumers are still injured and killed through no fault of their own, and the sad part of it is that much of that grief can be

prevented. Consumers need and depend on the work of CPSC being continued in a vigorous fashion.

Something is not right when the clear direction of Congress is being subverted. The statutory recipe is fine. It is the ingredients that are flawed. Too few resources and Commission leadership openly hostile to the mandate that it took an oath to enforce is a dangerous combination.

I urge you to exercise the strongest oversight possible to put this agency back on course. You are the public's last hope.

Thank you.

[The balance of the statement follows:]

STATEMENT OF R. DAVID PITTLE, PH.D., TECHNICAL DIRECTOR, CONSUMERS UNION

COST-BENEFIT ANALYSES FOR PRODUCT RECALLS

The Commission is currently giving consideration to what I believe is a seriously misguided and destructive course in implementing its product recall authority. Specifically, the Chairman and his staff appointees are promoting the use of formal cost/benefit analysis as an integral part of each and every product recall action performed under section 15.

At first glance, this seems harmless enough. After all, what could possibly be wrong about wanting to know the costs and benefits of a regulatory action? And the answer obviously is, nothing. But, there's a world of difference between an ongoing informal assessment of these factors and the kind of formal, mechanistic approach being pushed by the current CPSC Chairman. I have several major misgivings regarding Mr. Scanlon's approach, especially given the context within which he insists that it be implemented.

My first objection is that the current work on this issue from the Directorate of Economic Analysis at CPSC is not competent. I have read much of the material developed by Paul Rubin, the head of that unit. It completely ignores major factors necessary for a complete analysis, and many of the underlying assumptions are patently absurd—all of which leads to unrealistic analyses of little use except for getting into mischief. Who can forget the infamous case where his staff criticized a major trade association for overspending on a safety program? Who can take him seriously when his cost-benefit analyses completely ignore the real world in which manufacturers take safety actons based on the need to preserve good will and to avoid product liability lawsuits?

But competence aside, the product recall setting is uniquely not conductive to formal cost/benefit analysis. If done right, recalls occur before there are many injuries and before the full potential for injury or death can be calculated. Defective products are often discovered in commerce before they have caused any injuries. In this regard, let me reiterate that Congress made it abundantly clear that CPSC should not be guided by a "body count."

The lack of an accurate body count means that cost-benefit analyses will always be skewed against recall action. The Commission will almost always have a better idea of the costs of a recall than of its benefits.

I believe Congress took the right approach fifteen years ago by not requiring this analysis for actions taken under section 15. Voluntary recalls taken by cost-conscious business persons are laudable. The CPSC should not be spending its dwindling resources second-guessing and undoubtedly discouraging their decisions. I cannot help but wonder what Mr. Scanlon is trying to accomplish—it certainly isn't to enhance consumer safety.

PERSONNEL FLOOR FOR CPSC

Mr. Chairman, given the Administration's propensity for agency bashing, I believe it is incumbent on the Congress to establish a personnel floor to stem efforts by OMB to cripple CPSC. During the agency's history, it developed a competent staff of 900 scientists, engineers, epidemiologists, economists, lawyers, human factors specialists and compliance officers to fashion supportable, sensible improvements in product safety. No matter who counts or how they count or what they count, the agency's work has saved millions of consumers from death and injury. There is still a sizable agenda, and the yearly slashing of the agency's resources is ultimately a disservice to consumers. I urge you to amend the CPSC to mandate an

increase, or at least to freeze personnel levels at the agency, with an eye toward raising the floor at the next reauthorization.

SECTION 6(b)

Mr. Chairman, one of the criticisms of health and safety agencies is that they regulate rather than inform. Opponents of CPSC insist that govenment's role should be to provide information to the public and let consumers make their own safety choices.

Unfortunately, this would be difficult to implement at the CPSC. The agency stands alone among the federal health and safety agencies in being unable, as a practical matter, to provide important safety data to the public. The reason is that section 6(b) of the Consumer Product Safety Act presents a major obstacle to the release of product-specific safety information in the agency's possession. It does so by barring the release of this information unless and until the agency has sent a copy of it to the named manufacturer, allowed the manufacturer to comment on the information and reviewed the manufacturer's comments regarding the accuracy of the information and the fairness of releasing it.

The resource drain on the Commission for these procedures is enormous and unfair. Even if section 6(b) constituted good public policy—which it does not—it consumes so many staff hours and causes so many delays in the release of information, one cannot avoid the conclusion that it causes more problems than it solves. The CPSC is one of the smallest health and safety agencies. Yet, it alone must follow these burdensome procedures.

Industry knows about—and constantly exploits—CPSC's resource problems. Most manufacturers are well aware that a strong letter to the agency threatening litigation will chill the agency's enthusiasm for releasing information about them. They know that the most common reaction will be to accommodate a manufacturer's objections, even if the objections do not have substantial merit, simply to avoid a lawsuit.

But, my opposition to section 6(b) goes deeper than agency resource problems. I think it is bad policy for Congress to require a government agency to "censor" health and safety information. If the CPSC has acquired data that raises questions about a product, I think that the public should have access to the data and decide for themselves.

In this regard, I find completely unconvincing the argument by some manufacturers that merely by virtue of being the repository of information, the CPSC will inevitably be viewed by the public as having placed its imprimatur on it. A carefully worded disclaimer would easily handle this problem. I don't hold a library responsible for the content of the books on its shelves, nor would the public conclude that the accuracy of every consumer complaint in CPSC files is endorsed by the agency.

As a final point, I must say that I find it disturbing that those who argue most vehemently for giving the public information and letting them make safety decisions tend to be those most opposed to doing so in the case of section 6(b).

I urge you to repeal this section and promote the public's right to be informed.

MONITORING VOLUNTARY STANDARDS

Mr. Chairman, a recent action by the Consumer Product Safety Commission vividly illustrates just how much the agency kowtows to industry.

The Consumer Product Safety Act requires the CPSC to defer promulgating a mandatory standard whenever the agency determines that a voluntary standard will adequately reduce an unreasonable risk of injury and that the voluntary standard will be substantially complied with.

In order for the agency to make proper determinations about the level of compliance with a voluntary standard, it's often essential for the agency to gain access to a manufacturer's premises. Nothing should be more welcome for a manufacturer than the opportunity to show that it does not need to be regulated. And nothing should be more important to the CPSC than determining that an industry is living up to its safety promises.

Thus, a refusal by a manufacturer to allow the CPSC to enter its premises during a routine inspection to monitor compliance with a voluntary standard should raise the most serious concern by the agency. Yet, the Commissioners have just signalled the opposite attitude. On April 8, the Commission adopted a new policy requiring staff to get its approval before seeking warrants to gain admittance to premises of manufacturers who refuse to permit inspections for voluntary standards compliance.

This sends exactly the wrong message to those whom the Commission regulates. Given the total absence of regulation in recent years, many of us have concluded

that the Commissioners have never met—and will never meet—a voluntary standard they don't like. This latest step to encumber monitoring compliance with voluntary standards demonstrates a continuing timidity of the most extreme sort.

I must add that the Commissioners' defense of this policy is unconvincing. One member has suggested that the purpose is to strengthen the process since involving the Commissioners will ensure expeditious action. My response is that if that were the Commissioners' purpose, they should enact a policy that requires the staff to seek a warrant within a set time after the refusal of entry. Only if the staff failed to act within the time period should the Commissioners be notified.

Obviously, the Commission will not adopt such as approach because speed is not the reason for its policy. I submit that the real reason is their feeling that inspecting for voluntary standards compliance is intrusive and should be done reluctantly. Their reasoning is faulty. Their policy is flawed.

FIXED-SITE AMUSEMENT RIDES

Mr. Chairman, in 1981, Congress, as part of an overall political compromise, removed the Commission's authority over fixed-site amusement rides. To say the least, the decision was entirely political and not based on the merits. Unfortunately, this political deal has not worked to the advantage of the millions of consumers who annually go to enjoy amusement rides. Numerous deaths and injuries have occurred—and continue to occur—on these rides. And the states, upon whom the Congress depended to step into the regulatory void, simply have not done so.

I urge you to restore CPSC jurisdiction. Either the Waxman bill or the soon-to-be-introduced Simon bill would be acceptable. Neither restores rulemaking authority to the agency. Both, however, would restore recall authority and the requirement for manufacturers to notify the agency of product defects.

The reason for restoring agency authority is not to make the Commission the preeminent enforcer with respect to amusement rides. Rather, it is to ensure that problems that crop up with a defective ride become known and dealt with in other states in which it operates. Only the CPSC can enforce across state borders. And only the CPSC has been able to collect safety and injury information on a nationwide basis.

CONCLUSION

The product safety agenda is unfinished. Too many consumers are still injured and killed through no fault their own, and the sad part is that much of this grief can be prevented. Consumers need and depend on the work of CPSC being continued in vigorous fashion. Something is not right when the clear direction of Congress is being subverted—the statutory recipe is fine, it is the ingredients that are flawed. Too few resources and Commission leadership openly hostile to the mandate it took an oath to enforce is a dangerous combination. I urge you to exercise the strongest oversight possible to put this agency back on course—you are the public's last hope.

Thank you.

Senator GORE. Thank you very much. I certainly appreciate that testimony. It was very useful.

Our final witness on this panel is Stuart Statler, Vice President of A.T. Kearney in Alexandria, Virginia.

STATEMENT OF STUART M. STATLER

Mr. STATLER. Thank you, Mr. Chairman.

Like yourself, I have always had a tough time scoring those last three frames of bowling. I get confused. And I must say, listening to the testimony of the first witness this morning, I was exceptionally confused.

It amounted to sheer obfuscation of a record of ineptitude and laxity—a record that I would be ashamed of. And that being the case, I guess I can understand why the CPSC Chairman would not want to be too clear about it.

I might share my experience with you over seven years in the role of Chief Counsel to the minority to the Permanent Subcommittee on Investigations of the Senate Government Affairs Committee.

We had a rule of standing that every witness was administered the oath of office.

If that were the case this morning you would have heard very different testimony from the first witness and the entire first panel. The fact of the matter is, things are not all peaches and cream and things are not hunky-dorey these days at the Consumer Product Safety Commission.

The situation is deplorable. It is literally a disaster waiting to be discovered. And the only reason it has not been discovered is there have not been consistent oversight hearings of the kind you are conducting today. And the media has not paid the attention that the situation deserves.

Hopefully, as a result of these hearings and the work of Congressman Florio and the minority side on both House and Senate committees, since this is a bipartisan matter, more focused attention will be paid in the future.

The fact of the matter is, there is a vacuum of responsible leadership today in the position of the CPSC chairman. As a result, the agency is beset by inertia, by ill-will, and by infighting of the most extreme sort. There is rampant disarray, there is disrespect on the part of the public that the Commission purports to serve. And from my own experience with industry, there is disrespect on the part of the affected industries which the Commission also purports to serve and is patently disserving.

Staff morale is at its very lowest point in the 14 year history of the agency. Research is stymied. Unqualified political appointees on a daily basis are interfering with, and demeaning the professional work of a committed, dedicated, talented staff.

Some of these same political appointees are currently jockeying for permanent staff positions, in violation of Reagan Administration policy and in violation of longstanding civil service guidelines.

In so many ways—and I am sure you will be familiar with this—the demise of the CPSC as a viable regulatory agency resembles the systematic dismemberment of EPA during the administration of Anne Burford. I know you were active in trying to change that around and in fact were effective.

The principal difference is that there the havoc was open and obvious; and the media, the public, and Congress, and ultimately President Reagan forcefully responded in time to save the agency from its own self-destruction. The situation at CPSC today is so foul and so fetid, that I am not at all sure that the agency can ever again regain the proud stature that it once had in its earlier years.

That being the case, I think it is important to set forth for the record that these political appointees, now in office, are reflecting an ideology that is hell-bent on proving by their own ineptitude that the agency is not needed.

In point of fact, they are proving that they are not needed, but that the agency is now, more than ever.

I would ask you, Mr. Chairman, and the minority members of this subcommittee: Do not let the agency's recent poor performance deter you. Do not let its obfuscation, its laxity, the ineptitude on the part of the chairman and his followers, so to speak—do not let that fool you.

The functions of the agency, as Commissioner Pittle has just told you, are so terribly important to the well-being of this country. And those functions must be preserved. To the point that where the agency is not functioning by virtue of statutory provisions, those provisions should be changed and modified.

And I would be happy to work with the subcommittee in that effort. I have a series of recommendations in my testimony today to overcome some of the statutory problems.

But most important of all, unlike Commissioner Pittle, I join with former Chairman Byington and former Chairman Steorts in supporting a change in the agency's structive I too served as Acting Chairman for a period at the onset of the Reagan Administration. I feel that the time has come, is long—past due, to see to it that the collegial leadership of this agency be restructured.

The statutory five-member Commission and the present three-member body should be replaced by single-headed leadership to better effectuate the important purposes of the agency. Whatever the benefits once might have been from the concept of a five-member Commission, the experience of time, coupled with a virtual halving of the agency's resources and staff, point to the wisdom of revamping this cumbersome structure.

No other single measure could do more to restore the vitality of the agency and to restore accountable leadership. Both are so lacking today. It would have the additional effect, I might add, Mr. Chairman, of necessarily causing the President of the United States to have to submit a new nominee who could be an accountable administrator of this agency, as opposed to the present leadership.

I think it is important—and Commissioner Pittle struck on this—to give you some better idea of low bad the situation has become at CPSA, against this backdrop of indirection and dereliction at the highest reaches of the agency and the devastating budget and resource slashes of recent years.

Today, CPSC is increasingly unable to assess emerging risks from new products. Staff is simply unable even to identify those risks. So many of the hazards are not receiving the attention they deserve. So many of the issues I heard discussed this morning were issues before me five, six, seven years ago, and nothing is being done. That has to change.

A fast-disappearing staff is being spread so thin with each succeeding year. Investigations are being tabled indefinitely for want of funds or lack of interest at the top.

As a result, so many more Americans will be maimed, charred and killed as a result of this laxity, until and unless this committee can begin to turn the situation around.

My specific recommendations are contained in my prepared testimony. But by comparison to today, due to CPSC's accomplishments in its glory years, one cannot even begin to contemplate how much potential litigation has been averted because there are simply fewer victims.

Nor can one begin to contemplate how many product liability lawsuits have been avoided because of the enhanced sensitivity at all corporate levels to concerns relating to risks in their products.

And by virtue of CPSC's activity when it was a viable watchdog, as opposed to its recent inactivity, we can never really tally the untold monies saved by responsive companies and industries, by government at all levels, and by grateful families across our land who have been spared tragic harm.

As I have mentioned to you, I have a series of specific recommendations relating to both statutory provisions concerning CPSC, including one involving the Federal rules of evidence.

I would ask that the Committee in its consideration pay of these concerns, one of which I find particularly important now. Some companies literally are often shying away from making corrective changes that ever they view as necessary, simply because of the use to which that information is put in subsequent civil suits.

I concur with Commissioner Pittle's comments relating to amusement rides being a matter that this subcommittee ought to pay attention to, and should correct by statute. There is no reason why, when every other consumer product is duly regulated—with the sole exception of guns on the one hand and tobacco on the other—that amusement rides stand out as something that hundreds of millions of riders each year in this country cannot be adequately protected from.

And I do endorse the bill that Senator Simon plans to introduce, which I understand is similar to his bil considered in the last Congress.

And finally, it really is so much cheaper in the long run for government and industry alike to prevent tragedies from consumer products by paying attention to risk concerns in the first place, than to pay so dearly for them as the body count invariably rises.

You have an opportunity to change that, both in terms of changes in the Agency's structure and changes you may make in the law. I commend that effort.

Senator GORE. Thank you very much.

[The statement follows:]

STATEMENT OF STUART M. STATLER

SUMMARY

Mr. Chairman, thank you for the opportunity to offer my observations concerning reauthorization of the CPSC. In short, I believe that the functions performed by this agency should be continued in the interest of the Nation but that the collegial leadership of the agency needs to be restructured. The statutory 5-member Commission (and the current 3-member body) should be replaced by single-headed leadership to better effectuate the agency's important work. Whatever benefits may have flowed from the concept of a 5-member Commission at the start, the experience of time—coupled with a virtual halving of the agency's staffing and inflation-adjusted budget—point to the wisdom of revamping that cumbersome structure. No other single measure could do more to restore vitality and accountable leadership. Both are sorely lacking today.

Against a backdrop of indirection and dereliction at the highest reaches of the agency, the devastating budget and resource slashes, CPSC today is increasingly unable to assess emerging risks from new products, or even identify them in the first place. So many hazards are not receiving the attention they demand, while investigations are tabled indefinitely for a want of funds or lack of interest at the top. A fast-disappearing staff is being spread more thin with each succeeding year. Those who remain can't effectively target new trouble spots or correct many of those already threatening. As a result, so many more Americans will be maimed and charred and killed before this Committee can even begin to turn the situation around.

By comparison, due to CPSC's accomplishments in its glory years, one can't even begin to contemplate how much potential litigation has been averted because there are simply fewer victims; nor how many product liability lawsuits have been avoided because of the enhanced sensitivity at all corporate levels to risk factors that would otherwise have resulted in countless tragedies. And by virtue of CPSC's activty when it was a viable watchdog agency, as opposed to its recent inactivity, we can never really tally the untold monies saved by responsive companies and industries, by Government at all levels, and by grateful families across our land who were spared tragic harm.

I will set forth a number of key issues which I believe this Committee should address as it considers how to rethink and improve upon product safety regulation in this country. Some of my suggestions go beyond what is currently in the Consumer Product Safety Act and related statutory authorities. Some are meant to clarify ambiguous statutory language in order to forestall prolonged litigation as to meaning and intent. All the suggestions emanate from my own personal experience:

As Special Assistant to the Chairman of the National Commission whose inquiries were responsible for creating CPSC;

As a U.S. Senate staff member involved in drafting, Committee markup, and enactment of the enabling legislation;

As Commissioner working with, and responsible for carrying out the legislation; and

As a management consultant in the private sphere now advising companies how they might best, on their own, take initiatives to reduce the potential for risks in their products and byproducts.

AGENCY STRUCTURE AND LEADERSHIP

First, the leadership functions described in the CPSA and related safety acts should be administered by one person, not five or three. This could be simply done by redesignating the Consumer Product Safety Commission to be the Consumer Product Safety Agency and mandating that the President nominate, subject to Senate advice and consent, an individual with exceptional qualifications and background to serve in this singular capacity.

The just-completed GAO report, entitled "Consumer Product Safety Commission: Administrative Structure Could Benefit From Change," supports and argues strongly for this change. The report's well-founded findings and conclusions track my own personal experience as both a Commissioner for almost seven years (August 1979–May 1986) and Acting Chairman over the critical early months of the Reagan Administration back in 1981.

Single administrators responsible for major safety regulation are by no means uncommon. They are the rule: CPSC's present collegial forum is a notable—and increasingly notorious—exception. The whole panoply of other consumer safety legislation at the federal level is presently administered by a single person. This includes food, drugs and cosmetics (FDA); automobiles and tires (NHTSA); clean air, water and environmental wastes (EPA); occupational hazards (OSHA); aircraft (FAA); boats (Coast Guard); meat, poultry, eggs and pesticides (Agriculture Department); and many more examples.

The only exception I know of, and it's not really in a strict consumer product safety context, involves regulation of nuclear power plants by the Nuclear Regulatory Commission (NRC). That area is administered by a five-member panel which, over the years, has found itself embroiled in somewhat comparable internal squabbling, delays, and inefficiencies as today pervade the CPSC.

Whatever other changes your Committee may make in the reauthorizing legislation for this Agency, nothing would do more to enhance its ability to protect the American public from unreasonable risk of injury than this one reform.

You would cut back on needless procrastination and posturing.

You would eliminate the care and feeding of high-level appointees who really arent's needed to perform what is essentially a regulatory, not an adjudicatory function.

You would promote clearer decisions that could serve to better guide affected companies, instead of what now so often evolves as mush.

You would immediately accomplish direct savings, by all accounts, in excess of $1 million.

You would achieve indirect savings—in terms of staff time and energies currently wasted, and attentions diverted from priorities—of countless more millions of dollars.

And most important of all, single-headed leadership would mean far greater accountability to the Congress, to the President, and ultimately to the American public.

What form should such an Agency take? The GAO did not address that question. The obvious alternatives would be to keep it, as now, a separate and distinct agency, not part of any other; or to merge its functions within either an existing Cabinet department (e.g., the Department of Health & Human Services) or within some other regulatory body (e.g., the Federal Trade Commission).

I strongly believe that importance of this function is such that it should be continued as a discrete agency of government and not some indistinct unit submerged within another agency or Department. The latter would necessarily entail loss of identity and would likely be perceived by industry and by the public as a sign of diminished significance that the Congress attaches to this program. Moreover, I believe it would lead to substantially diminished accountability.

For these reasons and more, I would urge as the model for this agency, albeit on a much smaller scale, the current organizational set up that characterizes the Environmental Protection Agency (EPA). It is a separate and discrete agency of government headed by a Presidential appointee serving at the pleasure of the President. I believe that there are sufficient built-in protections, associated with high visibility and media interest in key safety issues, to ensure that regulatory decisions would be based upon the merits of the particular issue rather than on any political expediency.

Second, as important as a single administrator is to effectively run this Agency, so is Congress' responsibility to make sure it is the right person—else structural change becomes meaningless. And so, apart from how the CPSC should be structured to ensure more accountable leadership, urgent attention must be given to who will lead.

Today, there is a vacuum of responsible leadership in the position of CPSC Chairman. As a result, the agency is beset by inertia, ill will, and infighting. There is rampant disarray, and disrespect on the part of the public the Commission purports to serve and the affected industries which it patently disserves. Staff moral is at its nadir. Research is stymied. Unqualified political appointees are interfering with, and demeaning the professional work product of a dedicated, talented staff. Some of these same political appointees, who could care less about the agency's mission, now are jockeying for permanent staff appointments in violation of Reagan Administration guidelines and longstanding civil service policy.

The situation at the CPSC today is regrettable. It is deplorable. It is a disaster waiting to be discovered.

In so many ways, the demise of the CPSC as a viable regulatory agency resembles the systemmatic dismemberment of the EPA during the Administration of Anne Gorsuch Burford—the principal difference being that there the havoc was open and obvious; and the media, and the public, Congress and ultimately President Reagan forcefully responded in time to save the agency from self-destruction. The situation today at the CPSC is so foul, so fetid, that I'm not at all sure the agency can ever again regain the proud stature it once enjoyed.

If this agency is to be the watchdog that Congress intended, that intent needs to be reaffirmed by holding the current Chairman and his political appointees accountable for the mess they have created. And if the structure is to be changed, to leadership by one person, Congress must be vigilant in exercising close scrutiny over whoever may be nominated by the President to "clean house." Congress must also exercise continuous oversight over the way and means by which this is done on behalf of the outstanding companies who support responsible product safety regulation, and on behalf of the American public which benefits from it.

RESTORE ENFORCEMENT EFFECTIVENESS

Third, the Committee should focus on measures to restore the effectiveness and ensure the integrity of the Commission's enforcement arm. Whether accomplished through legislation or oversight, there is increasing evidence of a concerted effort on the part of the current leadership to shackle the Agency's enforcement capability. Notwithstanding the efforts of a dedicated Director of Enforcement and a committed, talented professional staff, intrusions from on-high in recent months are both evident and ominous.

Without any justification in the statute, enforcement decisions have been impeded by ill-founded, cost-benefit arguments which often tend to be rooted in an ideological bent *not* to upset the status quo. These arguments, and calculated selection of facts and putative cost factors, reflect an antipathy toward any mandatory action at all

against a company or industry. During the closing months of my own tenure, and based on trade press accounts coming to my attention of late, the intrusion of specious pseudo-economic assertions to offset recommended compliance and enforcement actions has become rather routine. Such voodoo economics invariably makes the case for doing nothing in the face of an acknowledged hazard.

Other indications of interference with the Agency's enforcement function include:

Curtailing authority of the enforcement division to monitor compliance by firms with voluntary industry standards.

Transferring key personnel out of the enforcement division.

Eliminating altogether authority of the Director of Enforcement or his staff to be involved in the litigation of CPSC enforcement cases brought in the Federal courts; or even acting in a liaison capacity with Department of Justice attorneys representing the Agency with respect to litigation arising from enforcement division efforts. In at least one very recent situation, the agency's Executive Director—a political appointee not trained in the law, and whose personal views on the subject are known to run counter to the enforcement decision of the Commission majority—reportedly interceded at a critical juncture in the Agency's most prominent pending enforcement matter, the situation involving ATVs.

Arranging for long term details of key staff members out of the enforcement division without bringing in replacements; and, overall, often not replacing enforcement division staff who have left the Agency, leaving those positions unfilled both in headquarters and in the regions.

Deemphasizing the enforcement function in field assignments, with an accompanying overemphasis on education and information platitudes that have never proved very successful in reducing accidental injury and death from unsafe products.

There are many more subtle actions and signals from top management, all pointing in the direction of trying to ensure that the enforcement division cannot adequately fulfill its responsibility. The situation is so serious that it behooves your oversight Committee to delve deeply into this subject, and possibly take testimony under oath so as to avoid the likelihood of any further intimidation of staff from on high.

RESOURCES NEED TO BE SUFFICIENT

Fourth, the agency needs sufficient resources to do its job properly. It simply doesn't have those resources today. The devastating budget and personnel slashes over the last several years have steadily sapped CPSC's ability to respond. The past seven years saw a whopping cut—taking inflation into account—of close to 40% in funding, down from $42,140,000 in FY 81 to the current FY 87 level of $34.1 million. Those same seven years also evidence the evisceration of CPSC's staff. The current on-board strength of 519 full-time staff, which tracks OMB's mark for FY 88, represents more than a 40% swipe since FY 81 when 889 full-time staff were on board.

The bottom line is scary: both staff and funds have been slashed without rhyme or reason, beyond any semblance of what sacrifices within government may have been needed to keep down spending. Worse, now 14 years after the agency's first budget of $30.9 million in FY '74, the FY '88 operating budget mark of $33 million represents a decrease in real dollar terms of more than 50% * * * greater than half! Put another way, simply to match the agency's FY '74 budget, the '88 budget would have to approximate $75 million. Whatever additional cuts OMB has in mind in coming years will simply add salt to a festering would.

As part of this reauthorization process, your Committee—and the Congress as a whole—must determine whether it wants an effective agency or a paper tiger. Certain that it is *not* the latter, I strongly urge you to give renewed consideration to authorizing a level of expenditure and stipulating a minimum personnel level more commensurate with the vital safety role you intend this Agency to play.

CONSUMER PRODUCT SAFETY ACT AMENDMENTS

Fifth, the Committee should decide, one way or the other, whether there is a private right of action inherent in Section 23 of the CPSA by injured persons who are plaintiffs in civil litigation against a company for failure to report a "substantial product hazard" under Section 15 of the Act. This important issue goes to the original intendment of the Act and is now being litigated many times over in individual cases in State and Federal courts around the country. Taxpayer monies and precious court time should not be wasted in that way.

You, in Congress, can decide now whether you want one outcome or the other. There are sound arguments that can be summoned up on both sides. But it's fool-

hardy in the extreme to continue to tie up the courts over the next several years in determining what Congress may have intended back in 1972, especially when the issue—to my personal knowledge as one involved in Committee markup and Senate Floor consideration of the bill—was never really addressed. Now that the issue has been raised, choose whatever course appears to be the best public policy today, clarify the language accordingly, and let's get on with it.

Sixth, this Committee should also consider clearing up the reporting responsibility of manufacturers, retailers and distributors under Section 15 of the CPSA, and under the related Acts that CPSC administers. I have always felt that it is counterproductive to the goal of comprehensive, timely reporting to require these responsible parties in effect to have to submit at any stage in the process (and in particular, at a very early stage) that their product may have a defect which may present a substantial product hazard. I believe that more reporting, and more prompt reporting, of potential hazards would result if the Congress borrowed in part from the later-enacted Medical Device Reporting requirements of the Food, Drug and Cosmetic Act (21 USC 352(t); 360(i); 371(a); and 374(e)), as well as from certain commonsense lessons learned from what is now some 14 years experience with this provision.

Specifically, your Committee might consider modifying the language of Section 15 to require reporting on the part of any such party who:

"* * * obtains information which reasonably supports a conclusion that such product:

"(1) has malfunctioned and the product would be likely to cause or contribute to a death or serious injury if the malfunction were to recur; or

"(2) is the subject of a liability claim or lawsuit involving an injury or death; or

"(3) fails to comply with an applicable federal or voluntary industry safety standard; or

"(4) may contain a defect; or

"(5) otherwise may present a substantial risk of injury."

Were that to be the operative language, I believe that many more reports would be received and could thereupon be evaluated by the CPSC at a much earlier point in time.

With sufficient resources, the agency could then separate out the wheat from the staff * * * serious risk issues from the inconsequential ones * * * and encourage prompt remedial response. At the same time, while those reporting would have a more clear-cut and onerous responsibility, they would be relieved of whatever negative connotations now pertain to their reporting under the existing language.

Seventh, the Committee should consider ways of correcting a particularly troublesome situation wherein manufacturers today may be reluctant to correct a product hazard, or design or production defect, solely or principally because of the impact such remedial efforts might have on ongoing ligitation by injured parties in the courts. This is an exceedingly delicate problem involving the need to protect the public at large from further injury versus the interests of those persons already injured who are seeking just compensation. On paper, the Federal Rules of Evidence restrict the introduction at trial of information about subsequent product redesign because of its potential prejudical effect. In reality, however, exclusion of such evidence tends to be more the exception than the rule because of other provisions in the Rules of Evidence that permit introducting such information for other purposes.

On the one hand I am loathe to involve your Commmittee in this imbroglio. But the issue is so central to whether safety improvements will in fact be made by a company, that it really should be addressed head on. I don't offer a solution, but urge that consideration be given to enhancing the incentives for a company to make timely, corrective changes in products that exhibit such risks or defects, while at the same time not doing irreparable harm to the ability of an aggrieved party to present all the relevant facts. Something needs to be done, however, to better reflect the interest of the society as a whole to prevent still more or further injury and death from a product hazard, without unduly compromising the rights of persons already suffering harm.

Eighth, the Committee should revsist anew the fact that, of all the Federal health and safety agencies, the CPSC is most prevented from sharing vital safety information with those in need of receiving it because of Section 6(b) of the CPSA. The Commission is the only Federal safety agency which must undergo egregious delays before disclosing information which mentions a particular manufacturer or brand of a product, or from which such information might be inferred. CPSC is the only such agency hampered in alerting the public to potential hazards which, once known and understood, consumers could take action on their own to forestall further injury or harm.

My concerns in this respect are well-known and were documented in the course the last round of reauthorization hearings back in 1985. The fact is, notwithstanding the requirements of the federal Freedom of Information Act, the CPSC is so bogged down in cumbersome procedures in order to comply with the exhaustive provisions of Section 6(b), that the backlog often runs over a year. The statutory "safeguards" have become an excuse for nondisclosure of such product specific information entirely. The watchdog has been effectively gagged.

Moreover, I witnessed in my closing months at the Commission, and have noted from reports since, that the clearance procedures of Section 6(b) even for generic safety information, briefing packages, staff presentations and the rest, are occasionally being misapplied according to the deregulatory philosophy now in vogue by those in charge. They misuse the provisions so as to prevent legitimate data and staff conclusions from reaching the public, while at the same time disseminating highly questionable, biased, and "doctored information. Such information typically tends to place far greater stress on the contribution of user error, abuse and misuse to a hazard situation, while understating the role of product design or defect as a cause for concern.

EXTENDED TENURE

Ninth, while I strongly believe in regular and intensive Congressional oversight of CPSC activities, I urge the Committee to consider a more extended agency tenure coming out of this reauthorization. I am sure you're aware that reauthorization proceedings held every other year are an exceedingly intensive undertaking for the agency. Considerable staff time is expended to prepare for the complete review of enabling legislation. This year's volumes of material point up the prodigious effort undertaken within the agency to validate its performance and prepare for each reauthorization.

All this, for a small agency, is time away from progress on hazard matters. It is frustrating to the staff to see too-closely spaced reauthorization efforts slow the pace of needed safety efforts. Worse, is the impact of a biannual reauthorization on staff attitudes and morale. The process generates anxiety and turmoil as rumors of impending difficulty invariably spread. Staff morale—although it could hardly be lower than today—tends to plummet whenever the fate of the agency hangs in balance. Staffers see their substantive efforts on hazard projects sidetracked for weeks (sometimes months) on end.

An extended reauthorization period of several years—perhaps 3 to 5 years—would go far toward redressing this problem. It would give the agency an adequate period in which to dedicate resources directly to resolving critical product risks. It would imply a signal from Congress that you're behind this agency and expect that it's important mandate will be fulfilled. And all the while, as noted, Congress can and should exercise tight control over the agency through periodic oversight hearings on policy matters, as well as on specific topical concerns and emerging hazards.

CONCLUSION

In closing, there are a great many more issues—indeed many substantive product hazards—not currently being addressed by the Agency which cry out for attention. Short of "cleaning house," I don't believe that the current regime in charge of the CPSC especially cares about these items or is the least bit likely to respond to them in any decisive way.

My comments throughout are not in any way meant to reflect adversely on the outstanding efforts of Commissioners Anne Graham and Carol Dawson to fulfill their oath of office and carry out the Commission's mandate. Their mutual concern about, and responsiveness to unreasonable risks has been demonstrated time and again on behalf of the public interest and industry's best interests. But their efforts repeatedly have been met with harassment, incivility, duplicity and non-responsiveness on the part of the Chairman and those political and certain other-level appointees who curry his favor, and by so doing renege on their statutory obligation to uphold the law.

The CPSC needs to stay on top of industry trends and spot needless risks before many—or any—consumers are hurt. In its heyday, dollar for dollar, I'm not aware of any other agency in all the United States Government that returned so much benefit to American taxpayers for the relatively small sums expended. But over these last several years, the trend toward excessive cost-cutting where health and safety are at stake is not only perilous to the well being of this Nation, but costly to all segments of our society.

It's so much cheaper for government and industry alike to prevent tragedies in the first place than to pay dearly for them as the body count inevitably arises.

Senator GORE. I appreciate the contribution of each member of the panel. I have a few questions, to which I would like to get brief responses, because we are in the midst of another vote.

Should section 9 of the Consumer Product Safety Act be amended to allow the CPSC to defer to an existing voluntary standard only in situations where a standard actually exists?

It has been suggested that the procedures currently used, in situations where voluntary industry standards, like state remedies, are merely in the formative stages but do not actually exist.

Mr. PITTLE. When I was acting chairman, an amendment came up in our legislation, that would make the Commission's deference to a voluntary standard preemptive, and it was soundly defeated in the conference committee.

There was and is a concern that if the Commission defers to a voluntary standard, there may be a certain amount of compliance that won't occur. Also, there is a certain amount of additional safety that the Commission may, by a majority vote, decide isn't achievable in the context of obtaining an immediate voluntary action. It's a trade-off.

And finally, there is a certain amount of activity at the State level. The State might recognize that CPSC is not going to enforce the voluntary standard, and may not raise it to the level of safety they need. And as a result, the State will act on its own.

I would guard that very jealously. I do not think that the Commission's agreeing not to mandate a standard should have enough force to preempt action to improve safety at the State level. That would be a mistake.

Senator GORE. I would like to followup, and I would like to give other members an opportunity to respond for the record.

Unfortunately, I am going to have to go to the Senate Floor to vote. Just a very brief response to these final two questions.

Does anyone here believe that it is a good idea to put the CPSC staff to work doing cost-benefit analyses of voluntary recalls of hazardous products proposed by manufacturers?

Does anybody think that's a good idea?

Mr. STATLER. Definitely not.

Ms. STEORTS. Definitely not.

Mr. BYINGTON. I do not see any value in it.

Mr. PITTLE. Definitely not.

Senator GORE. Should Congress legislate to ban or to recall ATVs?

Mr. STATLER. I personally am of the view that Congress should take this matter into their own hands. What the remedy should be is a matter you will have to decide.

Senator GORE. Very briefly.

Mr. BYINGTON. May I make one comment? I think if the Congress decides to do that, it ought to do it very carefully, and ought to go back and take a look at what happened in cellulose insulation when it did exactly that.

Mr. PITTLE. I have not sutdied the matter fully, so I reserve my opinion. But Congress did something like that with lead-based paint poison prevention, where it said there will be a ban at some

future date unless the Commission created enough information to either convince Congress there was no need for a ban.

And I think that would be a way for Congress to approach this matter. I think you probably would have a difficult time simply banning them.

Ms. STEORTS. I think a very strong look at what the Commission is doing at this point is in order from you and the Congress. I am appalled that they have not taken stronger action up to this point.

Senator GORE. Thank you very much. I wish we had more time. We will submit our remaining questions for the record.

Our next witness will be Mr. S. Anthony McCann. I would like to express my thanks to this panel again.

I am sorry for the shortness of the time available. But we will have a brief recess and come back and hear Mr. McCann.

[Recess.]

Senator GORE. The subcommittee will come back to order.

I will not repeat my apology, only because everyone here knows what is going on on the Senate Floor. But we will come back to order.

Our witness is Mr. S. Anthony McCann, Assistant Secretary for Management and Budget with the Department of Health and Human Services; accompanied by Dr. Lowell Harmison, Deputy Assistant Secretary for Health.

Welcome to both, and please proceed.

STATEMENT OF S. ANTHONY McCANN, ASSISTANT SECRETARY FOR MANAGEMENT AND BUDGET, DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCOMPANIED BY DR. LOWELL HARMISON, DEPUTY ASSISTANT SECRETARY FOR HEALTH

Mr. MCCANN. Thank you, Mr. Chairman.

As you said, my name is Tony McCann, and I am the assistant secretary for management and budget in the Department of Health and Human Services.

Accompanying me is Dr. Lowell Harmison, assistant secretary for health and the Public Health Service.

Before beginning, I would like to thank you for accommodating our request to testify on the reauthorization of the Consumer Product Safety Commission.

We are here to present the Administration's proposal to place the Consumer Product Safety Commission in the Public Health Service.

Within the Public Health Service we propose that the Consumer Product Safety Commission, like other public health agencies and bureaus, would have a single administrator; and recommend that the administrator be appointed by the President with the advice and consent of the Senate.

The agency would retain its statutory functions and missions.

The Administration is proposing this change for two main reasons. First, to coordinate public health and safety activities of the Commission with those of the Public Health Service; and secondly, to improve management of the agency through proper executive oversight.

In my written statement which I am submitting for the record, I indicate in more detail the origins of the Consumer Product Safety Commission, which lies in—and its history in the Food and Drug Administration.

Currently, the Commission is an independent agency of the Federal Government. By statute it has five commissioners appointed by the President and confirmed by the Senate.

Its mission is to protect consumers from unreasonable risks of injury associated with approximately 1,500 everyday products.

Public Health Service is an operating agency within the Department of Health and Human Services. It is led by the Assistant Secretary for Health, and it is composed of six agencies, among which are the Centers for Disease Control, Food and Drug Administration, National Institutes of Health.

Its history goes back to 1798.

The mission of the Public Health Service is a broad one, and it includes protection of health, the advancement of the nation's physical and mental health, prevention and control of disease and disability, and the enforcement of the food, drug and cosmetic laws of the country.

During the past several years, the profession of public health has begun to view death and disability caused by violence and injury as a public health issue, subject to the same types of scientific inquiry that we give to more traditional diseases.

Injury is the leading cause of disability for children and premature death in this country.

There are behavioral, biomedical, environmental and product-related precursors to injury, factors which are subject to prevention.

As our definition of public health has broadened, the prospective roles of the Public Health Service and the Consumer Product Safety Commission have drawn closer, requiring closer coordination between the two agencies.

As the public health agency for the Federal Government, I believe that the Public Health Service is a proper location for the Consumer Product Safety Commission.

It will provide an emphasis on safety and public health, of assuring consistency of mission and enhanced coordination.

The General Accounting Office study, which has been mentioned before, concluded that the Consumer Product Safety Commission could benefit from a change to a single administrator; resources that are now being used for the Commissioners could be used for programmatic activity.

In addition, the General Accounting Office indicated that major studies, including the Hoover Commission and the Ash Commission have both indicated substantial concern with the structure of independent regulatory commissions.

Further, seven of the eight other health and safety agencies reviewed by the General Accounting Office were all headed by single administrators.

Our proposal assumes the same funding of staff levels as were recommended by the President in his 1988 budget request. Should administrative savings occur, we would propose to use those for additional programmatic activities.

The Administration is confident that the Consumer Product Safety Commission—putting the Consumer Product Safety Commission in the Public Health Service will enhance its effort to address product safety hazards.

The Public Health Service is a strong team with very visible parts and a long tradition of protecting public health.

As part of this team, the Consumer Product Safety Commission will have executive oversight necessary to ensure partiality and continued program improvements, putting all the resources of the Public Health Service immediately at hand.

Moreover, the Consumer Product Safety Commission would have the Secretary of Health and Human Services, Dr. Bowen, as a spokesman for the agency with Congress and the Presidency, giving it greater access to senior executive branch policy officials.

Upon enactment of our proposal, the Consumer Product Safety Commission would be moved intact into the Public Health Service, and sufficient resources would be made avalable to ensure a smooth transition.

In summary, Mr. Chairman, the Administration is proposing that the Consumer Product Safety Commission—excuse me, is proposing changes in the Consumer Product Safety Commission which we believe will improve the organization's current and future ability to achieve its mission.

As a new member of the Public Health Service team, led by a single administrator, the proposed organization would be better able to pursue important missions to protect the safety and health of our nation's consumers.

We urge the subcommittee to consider favorably our proposal—the proposal which we have placed before you today, and obviously, will provide any assistance that we can.

Again, I would like to thank you for accommodating us for testifying on relatively short notice, and Dr. Harmison and I would be prepared to answer any questions you might have.

Senator GORE. Well, thank you very much.

We appreciate the brevity of your testimony under these circumstances.

Let me ask you, do any of HHS's current functions concern any aspect of the consumer products which fall within the jurisdiction of the CPSC?

Dr. HARMISON. Yes, Mr. Chairman, I think we have enormous breadth and activity within the Public Health Service, that is directly relevant to the Commission.

Particularly, in the Centers for Disease Control and the injury program area, and NIOSH in the occupational area, particularly in the NIH environmental health sciences, the national toxicology program, and other data bases.

The National Cancer Institute has an enormous data base and a valuable research base that will be helpful.

The National Center for Health Statistics is an important source of information of epidemiological data that is invaluable to establishing a strong base for assessment of risk.

So that is just to name a few. There are other components, programs, that are directly relevant.

Senator GORE. All right, now if we accepted your proposal, would there be any budgetary savings of benefit to HHS?

Mr. MCCANN. We do not believe there would be any of benefit to HHS. Our proposal would be that as we restructure the agency initially, at least through providing for a single administrator, we would use the existing budget request, which is approximately $34 million.

We would reprogram that money within the Consumer Product Safety Commission.

Senator GORE. Would you like to have EPA also?

Mr. MCCANN. It was part of the department at one time. No, sir.

Senator GORE. Why not?

Mr. MCCANN. Well, initially, as the management person, that would be an extremely large agency for us to absorb, and I think it would require substantially more study before we——

Senator GORE. Any other reasons?

Well, the reason I ask is, it was separated because of concerns not having to do with management, but having to do with the independence of its decisions.

And it seems to me that similar concerns exist here. I have an open mind, but I do want to express for the record some skepticism about this particular proposal.

I respect your presentation, and do not rule it out. But I want to express some doubts about whether it is a wise policy to pursue.

Mr. MCCANN. Well, I would only observe, Mr. Chairman, that while there are obviously many disputes over specific issues, the department handles a broad range of very complex, and in some cases, very sensitive political issues.

And I think on the whole, handles them in a manner which is to our credit and to the credit of the public health service agencies that do them.

In addition to that, as has been expressed before, the Public Health Service is an organization that has got very many highly visible parts.

The institutes within the National Institutes of Health, for example, which are technically four levels below the Office of the Secretary, still have immense visibility on the Hill and elsewhere.

So I think some of the concerns, as the consumer movement emerged in the 1970s, that were not necessarily addressed in FDA at the time, may not now exist.

Senator GORE. On the other hand, we have seen a new—and what would have been in past years unthinkable—encroachment on FDA's independent judgment in the current administration.

Mr. MCCANN. Well, I understand you have some concerns about that.

Senator GORE. Yes, I do have some concerns about this proposal. But it is one that we ought to examine very carefully, and certainly one that should be given serious consideration, anytime we look at changing the structure and location of the CPSC.

I appreciate your appearance here today, both of you. Thank you very much.

Mr. MCCANN. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF S. ANTHONY MCCANN, ASSISTANT SECRETARY FOR MANAGEMENT AND BUDGET, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. Chairman and members of the Subcommittee

My name is Anthony McCann. I am the Assistance Secretary for Management and Budget of the Department of Health and Human Services (HHS). Accompanying me is Dr. Lowell Harmison, Deputy Assistance Secretary for Health of the Public Health Service. We are here today to present the Administration's proposal to place the Consumer Product Safety Commission (CPSC) in our Department in conjunction with the Subcommittee's consideration of the reauthorization of CPSC.

The proposal would move the CPSC to the Public Health Service (PHS) of the Department of Health and Human Services. Within the PHS we propose that CPSC would have a single administrator, appointed by the President with the advice and consent of the Senate, would retain its current statutory functions and mission. The proposed authorization levels are $34.4 million for FY 1988, and such sums as necessary for FY 1989 and FY 1990.

The Administration is proposing this change for two main reasons:

To better coordinate the public safety activities of the agency with those of relevant PHS programs with which it shares many mutual interest; and

To improve management of the agency through proper executive oversight, at the same time continuing its important rulemaking and other functions.

I will discuss these issues in more detail later in my statement.

THE CONSUMER PRODUCT SAFETY COMMISSION

The origins of CPSC lie within the Food and Drug Administration (FDA) of the Public Health Service. Specifically, product safety functions were expanded in 1968 when FDA became a part of the Consumer Protection Environmental Health Services (CPEHS) within the Public Health Service. In 1970, CPEHS was abolished and FDA created the Bureau of Product Safety.

In June 1970, the National Commission on Product Safety recommended the establishment of a separate consumer Product safety agency. Thereafter, in October 1972, the Consumer Product Safety Commission was formally established and was activated in May 1973. At that time, FDA transferred resources associated with those products covered by the Consumer Product Safety Act of 1972.

Currently, the Consumer Product Safety Commission is an independent agency of the Federal Government, directed statutorily by five commissioners appointed by the President and confirmed by the Senate. CPSC's mission is to protect consumers from unreasonable risks of injury associated with approximately 15,000 everyday products. Examples of these products are lawnmowers, toys, firework, household chemicals, heaters, and hair dryers. The risks include amputation, fire, electrocution, burns, asphyxiation and cancer.

THE PUBLIC HEALTH SERVICE

The Public Health Service is an operating division of the Department of Health and Human Services. The PHS is led by the Assistant Secretary for Health and is composed of six agencies: the Alcohol, Drug Abuse and Mental Health Administration; the Centers for Disease Control; the Agency for Toxic Substances and Disease Registry; the Food and Drug Administration; the Health Resources and Services Administration; and the National Institutes of Health. The origins of the PHS go back to the establishment of the Marine Hospital Service in 1798.

The mission of the PHS is:

Protection and advancement of the Nation's physical and mental health;

Support and conduct of medical, biomedical, and health services research;

Administration of grant and contract support for the development of health services resources;

Prevention and control of diseases and of alcohol and drug abuse; and

Enforcement of laws which assure the safety and efficacy of drugs, protection against impure and unsafe foods, cosmetics, medical devices, and radiation-producing products.

RATIONALE FOR ADMINISTRATION PROPOSAL

During the past serveral years, our definition of public health has been expanding. We have begun to view death and disability caused by violence and injury as a public health issue—subject to the same types of scientific inquiry as we give the more traditional diseases.

Injury is the leading cause of disability for children and young adults and of premature death in this country. And as we have conducted epidemiological studies on injury, we have found that there are behavioral, biomedical, environmental and product related precursors to injury—factors subject to prevention and intervention.

As our definition of public health has broadened, the respective roles of the PHS and the CPSC have grown closer. The PHS has become more interested in accident prevention and injury control through product safety. This merging of interests has created a need for closer coordination between the two organizations.

The PHS has a long history of providing effective public health services to this Nation. During its almost 200 year lifetime, it has shown great compassion for the health and safety of our people. I believe that the PHS is a proper location for the CPSC. It will provide the proper emphasis on safety and public health while assuring consistency of mission and enhanced coordination for both organizations. The merger will result in providing better product safety and public health to all Americans.

The General Accounting Office (GAO) has concluded in its recent report that the CPSC could benefit from changing to a single administrator. Not only could resources now used to provide staff support to five commissioners be used for CPSC programmatic activities, but management could be improved. The GAO found that "all of the major studies over the past 50 years, including the Hoover Commission and the Ash Council reports, have indicated significant problems with the commission administrative structure." Further, seven of the other eight health and safety regulatory agencies reviewed by the GAO were headed by a single administrator.

ADDITIONAL CONSIDERATIONS

The Administration is mindful that it is not an every day occurrence to change the status of an independent agency. However, as the GAO's report has aptly covered, there are clear advantages, as well as a growing consensus, that CPSC's mission can be better served as part of an existing executive branch agency.

No budget or staff reductions are being sought. No budget savings are being sought. Should savings accrue by reducing the number of commissioners, these funds will stay within the CPSC program. Continuity would be maintained through retention of current CPSC staff.

The Administration is confident that placing CPSC in PHS will enhance, rather than hamper or delay efforts to address product safety hazards. The PHS is a strong team, with very visible parts and a long tradition of protecting the public health. As part of this team, CPSC will have the executive oversight necessary to insure impartiality and continued program improvements, while also giving the CPSC the flexibility necessary to address product safety hazards. Far more effective interaction with CDC and FDA will be one immediate advantage.

Moreover, CPSC would have the Assistant Secretary for Health and the Secretary of Health and Human Services as spokespersons for the agency with Congress and the President. Under such a system, CPSC will probably have greater access to senior executive branch policy officials than at present as a small independent agency.

Upon the enactment of our proposal, CPSC would be moved intact to PHS, where the support services and staff functions of HHS would be made available. The Administration is cognizant that some organizational details will still need to be worked out by the mandated transition date of January 1989. However, as a matter of principle, we are committed to sufficient resources being made available to assure a smooth transition to PHS, and we are committed to retaining the confidence of the American people and of Congress in the CPSC's mission of consumer protection.

CONCLUSION

In summary, the Administration is proposing changes in the CPSC which we believe will improve the organization's current and future ability to achieve its mission. As a new member of the PHS team, led by a single administrator, the proposed organization would be better able to pursue its important mission to protect the safety and health of our Nation's consumers. We urge the Subcommittee to consider favorably the proposal we have placed before you today. We will soon be submitting legislation to implement this proposal. In addition, we offer our assistance and support as you continue your discussion of this issue.

I appreciate the opportunity to testify, Mr. Chairman.

Dr. Harmison and I would be pleased to answer any questions.

Senator GORE. Our next panel is made up of Mr. Richard Gimer of the law firm of Hamel & Park, representing the United States Chamber of Commerce; Ms. Mary Ellen R. Fise, Product Safety Director for Consumer Federation of America; and Mr. Gene Kimmelman, Legislative Director of Consumer Federation of America.

If the three of you will come to the witness table, we will get this panel underway.

Welcome to the three of you. Again, because we are in this Chinese fire drill mode over on the Senate Floor, we will ask you to summarize your prepared statements, and we will make certain they are printed in full in the record.

Mr. Gimer, welcome. Would you please proceed?

STATEMENT OF RICHARD H. GIMER, COUNSEL, REPRESENTING THE U.S. CHAMBER OF COMMERCE

Mr. GIMER. Senator Gore, I will give a very abbreviated summary of our planned capsule summary to allow time to deal with some of the points that have been made by the prior panels this morning.

The prior witnesses have consisted of chairmen, commissioners, former chairmen, former acting chairs.

My perspective is not shared by any of them. It is as a private practicing attorney who has been involved with the U.S. Chamber of Commerce Committee structure concerned with the Consumer Product Safety Commission, not only since the Commission was brought into being by the 1972 statute, and with the National Commission on Product Safety, which recommended the creation of the CPSC.

And I have had the privilege, throughout the 1970s and 1980s of being involved in the Chamber's evaluations of Commission operations and participated in meetings with the Commission to raise concerns of the business community about how it was operating. The Chambers involvment included the commissioning of a consultant to study criteria intended to lead to better Commissioner appointments; a study which was eventually provided to the Senate and House committees in conjunction with appointments made in the late 1970s.

I have also had occasion to represent as many as 50 individual manufacturers in compliance and enforcement contexts involving the Commission and its statutes. This includes statutes previously enforced by the Federal Trade Commission, before the CPSC assumed jurisdiction over the Flammable Fabrics Act.

From the testimony presented this morning, I have the impression that the commissioners themselves have views of the issues being raised as either being black or white.

And perhaps to some degree, Senate and House members too, have to view these issues as black and white when, from my perspective, the overwhelming portion of these issues being raised are mostly cast in shades of gray.

I am reluctant to see us make legislative and/or regulatory decisions as if these issues and the solutions are black and white. And I would like to illustrate.

With respect to the single member versus collegial body issue, the Chamber of Commerce doesn't have a formal position at this time.

When the creation of the Commission was being considered by Congress, the Chamber of Commerce did support one of the bills that incorporated the single administrator form.

However, in the years that have ensued, the Chamber's members simply have not shown their disposition to favor strongly one form of structure over another. For that reason, it doesn't have a current position.

But having been actively involved in the evaluation of the Commission and its operations since its creation, the Chamber is strongly of the view that the problems that are identified by the GAO in its report, all of which are, in the Chamber's view, valid, do not dictate *per se*, a structural change.

The problem as we see it is not with the structure so much as it has been with the almost continuous bickering among the commissioners, and to a certain degree, the lack of mutual respect that has characterized the commissioners relationships.

This problem is not merely one plaguing the current commission. This problem goes back a long way; a problem which extends back to the inception of the Commission. Certain characteristics of good Commissioner appointees should be given more credence than they seem to be. These needed characteristics are mentioned in our formal statement.

The second issue we address is the use of economic analysis in enforcement. The testimony this morning on whether cost/benefit analysis should be used to assess voluntary recalls used the word "voluntary" as if it refers to some specific single frame of mind.

My experience is that this term does not refer to a single condition, I sense that the Senators' questions about the use of economic analysis or cost-benefit analysis with respect to proposed voluntary corrective action plans refers to a situation where a manufacturer of a product, on its own concludes, based upon its assessment of the hazard and its knowledge about the distribution of the product and its own assessment of the product's liability and other implications of the situation, chooses to make a voluntary recall. In those circustances the Chamber I Conference does not believe that the Commission should spend its time second guessing a manufacturer who comes to that kind of a conclusion.

But perhaps more than 95 percent of the remedial actions undertaken under the Commission's statutes are encompassed within the voluntary category because the only remedial actions that really do not come within that definition are mandatory orders issued by the Commission after formal administrative proceedings or court orders.

There is a vast amount of enforcement activity, which is called "voluntary", but which is in reality a product of a coercive relationship exerted by the Commission over industry.

The Chamber believes that the Commission should not be asserting, usually through its staff, those coercive influences over industry without the benefit of the best economic evaluations that are within the Commission's capacity.

In other words, just because you call some remedial action at the end of an investigation "voluntary" because it was not compelled by the result of a judge's order does not mean the economic considerations in the relief the Commission is attempting to secure should be ignored.

Finally, a comment on the matter of the use of voluntary standards. The Chamber of Commerce was very involved in the 1981 amendment process. Additionally, I was personally involved in the presenting testimony in support of amending the statute to require greater reliance on voluntary standards.

The Chamber of Commerce continues to believe that the statutory language relating to use of voluntary standards is not the problem here. The problem is with the implementation of the statutory language.

The testimony this morning suggests that there is a polarity of views on the legislative intent. Some think that if there is a promise that a voluntary standard might come into being, the agency should somehow defer to that promise. On the other hand, you have the question of whether, in order to result in a formal deferral to a voluntary standard, there should be an existing standard as opposed to the mere promise of a standard.

I think I can fairly say that when these amendments were being championed and adopted in 1981 the conception was that at all stages in the Commission's involvement with respect to a product, appropriate attention should be given to the voluntary standards system. If and when a standard existed, it was required to be judged by the formulas specified in the statute. If a standard did not exist, then the statute does not speak to it. Now, the question is when does the existence of the standard become relevant.

In my view—and here again, I believe I speak fairly for those who were involved in the formulation of this statutory language—the timing feature can be judged at any stage of what could be a lengthy rulemaking process. The Commission should not defer to a nonexistent standard in terms of its advanced notice of proposed rulemaking. But on the other hand, if the standard comes into being before there is a final decision and there is proof of the substantiality of the compliance at the time when a final decision would be made, then that should be taken into account in deter.

But you cannot defer indefinitely on a promise.

[The statement and questions and answers follow:]

STATEMENT OF RICHARD H. GIMER, ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Mr. Chairman and members of this Subcommittee, my name is Richard Gimer. I am a member of the Washington, D.C. law firm of Hamel & Park. I have been actively involved in those activities of the U.S. Chamber of Commerce which concern the Consumer Product Safety Commission ("Commission") dating back to the period before the enactment of the Consumer Product Safety Act ("CPSA") in 1972.

We appreciate the opportunity to present the views of the Chamber during this authorization hearing. While there are many aspects of the Commission's activities which could be addressed in our testimony, we take note of the Committee's expressed interest in issues relating to the performance of the Commission and the effectiveness of its enforcement activity; and, in the views of the Chamber in response to the recent United States General Accounting Office ("GAO") Report concerning the administrative structure of the Commission.

With these objectives in mind, our formal statement will deal with (1) the GAO Report on structure, (2) the use of voluntary standards, and (3) the use of economic analyses in the Commission's decisional process.

ADMINISTRATIVE STRUCTURE

In preparing the testimony for this authorization hearing, representatives of the Chamber reviewed the Report on the Commission issued by the GAO in April, 1987. As you are aware, that Report focused on several structural features of the Commission and concluded that the agency should be converted from a five-member commission form to a single administrator form.

Prior to the enactment of the CPSA in 1972, the Chamber favored a version of the legislation then under consideration which would have established a product safety agency to be headed by a single administrator rather than the multi-member independent commission form ultimately established by the CPSA. However, because the membership of the Chamber has not registered a strong preference for a structural change, the Chamber does not have a current policy on the two issues which were the focal point of the GAO evaluation (*i.e.*, the single administrator issue and the independent status issue).

Because a number of the organizations and officials whose views were solicited by the GAO in conducting its evaluation of the Commission's structure are involved in Chamber activities relating to product safety, we are aware of the comprehensive nature of the evaluation which the GAO undertook. We consider the April, 1987 Report of the GAO with respect to structure to be comprehensive and evenhanded. The Report makes a case for a structural change to the single administrator form (while deferring on the question of whether the agency should be transferred to one of the cabinet-level departments). However, many of the factors relied upon for this conclusion would appear to be as much a reflection of other problems with the Commission as indicators of failure of the structure itself. Without taking a formal position on the question of whether there should be a structural change now, we offer the following comments on the GAO Report by way of providing a perspective. We think it would be a mistake to blame the institutional structure for the shortcomings if the result would be to accept the status quo in terms of the agency's performance.

While citing staff turnover as suggesting the need for a structural change, the Report does not indicate that instability of the staff at the Executive Director level is a function of the multi-member Commission operation, although it certainly could be the reason for turnover in certain instances. The turnover rate at the Chairperson level is due at least in part to the length of the term which each chairman was given and, in any event, is not inherently a fault of the collegial structure. The appearance of high turnover has been compounded by the number of "acting" Chairpersons. For the most part, this has stemmed from delays in the nomination and/or confirmation process. We review this to be as much a reflection of the personnel selection and confirmation process as on the agency's structure itself. It is, in any event, a problem which might have plagued this agency irrespective of its structural form.

The consistency of views between the Chairperson and the individual Commissioners documented in the GAO Report does not dictate the conclusion that the Commissioners were mere surplusage, because votes on the ultimate issues mask the process by which the decisions were reached. Moreover, the analysis was based upon a sample and did not purport to focus on the particular decisions in which the benefits of the collegial form might have been most evident. If the diversity argument for the collegial body form were present, then the degree to which the Chairperson ended up voting in the majority should not be considered an adverse reflection on the structure itself.

While the Chamber does not have a present policy position on whether the collegial body aspect of the Commission's structure should be abandoned in favor of the single administrator form, it is of the strong view that there are now, and nearly always have been, serious flaws in the brand of collegiality practiced at the Commission. From the outset, there have invariably been too many Commissioners covetous of being Chairperson at any given time. This has been a divisive force which, at times, has brought disrespect to the Commission from many quarters; and it appears to have rendered the Commission ineffective for significant periods over its existence. The public interest has suffered as a consequence.

The criticisms of the collegial structure attributed by the GAO Report to the high-level officials interviewed during its investigation mirror our observations of Commission decision-making; but certain of the criticisms (*i.e.*, lack of understanding of

technical issues, competitiveness, and the tendency of the Commissioners to micromanage) may also indicate problems with the appointees rather than the structure.

While it is true that these shortcomings might be avoided by converting to a single administrator form (assuming appointment of an ideally suited Chairperson), it would be a mistake exclusively to link needed improvements in these areas to a structural change. There are other solutions, and they deserve attention now irrespective of legislative change. In this regard, the Chamber believes that so long as the Commission is a multi-member agency, it should be comprised of individuals with (1) an appropriate diversity of professional experience (considering the mission and operations of the agency), (2) sufficient competence and experience to merit the respect of the other Commissioners, and (3) the temperament to serve in such a body.

USE OF VARIOUS FORMS OF ECONOMIC ANALYSIS IN COMPLIANCE AND ENFORCEMENT

Since the creation of the Commission, the Chamber has been concerned about the role of economic analysis in Commission decision-making. As early as December 3, 1974, the Association Advisory Group on Product Safety (an *ad hoc* group associated with the Chamber) met with the full Commission to present a review of its first 18 months of operation. At that time, the Advisory Group stated it was most concerned that in promulgating consumer product safety rules, the Commission might be losing sight of the requirements of § 9 of the CPSA. We pointed out that this section requires that the Commission make appropriate findings to support its rules with respect to the need of the public for the products in question and the probable effect of such a rule upon the utility, cost, or availability of such products to meet such need; and any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of commercial practices. We emphasized that the CPSA indicates that the Commission was expected to balance the probability that risk will result in harm and the gravity of such harm against the effect on the product's utility, cost, and availability to the consumer. In addition, we indicated that the legislative history of the CPSA shows that no standard would be expected to impose added costs or inconvenience to the consumer unless there were reasonable assurance that the frequency or severity of injuries or illnesses would be commensurately reduced.

During these discussions with the Commission, we stressed the view that the Commission must make a serious attempt to determine effectively the relationship between the need for promulgating new consumer product safety rules and the direct effect of anticipated rules on competition or disruption of commercial practices and added costs to be born by consumers as required in CPSA § 9. Although no final standards had been promulgated at the time of this initial conference, the Chamber representatives expressed doubt that the level of effort being devoted to economic analysis as to the standards which were then in process would meet the statutory prerequisites. We said then that it appeared the Commission had not structured itself to make the required effort to measure the total impact of its proposals on all parties.

In the years which have intervened, the apparatus to make these types of assessment (whether referred to as economic analysis, cost analysis, cost-benefit analysis, or some other term) has been enhanced; the statute has been amended in such a way as to make it even more clear that economic analysis in various (and sometime specific) forms is essential to the decisional process relating to standards-making and banning action;[1] and we understand that economic analysis is now being used in making some decisions. However, the internal debate continues over (1) the quality of the analysis provided, (2) limitations on the use of economic analysis (particularly cost-benefit analysis) in making compliance and enforcement decisions, and (3) limitations on the scope and content of such analyses where they are solicited, offered, or provided.

In preparing for these hearings, we have reviewed the voluminous Briefing Package now being circulated within the Commission relating to the use of cost-benefit analysis in compliance activity. While virtually every Directorate of the Commission is involved in one way or another, it appears that the central issue now is whether the Directorate of Compliance ("DC") will be allowed to dictate the form of cost-benefit analysis being provided to it by the Directorate of Economics ("DE") in certain types of enforcement contexts.

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[1] For certain rulemaking purposes, the statutes administered by the CPSC require comparison of costs and benefits. *See e.g.*, CPSA § 9(f), FHSA § 3(i) and FFA § 4(j).

The Commission's DC objects to the version of cost benefit analysis performed by the DE. In essence it contends DE's analyses (1) ignore unquantifiable benefits of compliance actions, (2) depend on assumptions but purport to be definitive guides for decision-making, and (3) substitute economic judgments for complex legal and policy determinations. The DC also contends that CPSA § 15 does not call for cost-benefit analysis and the applying cost-benefit analysis to CPSA § 15 matters would create additional delays in developing corrective action plant.

The DC has developed a list of what factors should be considered in making compliance and enforcement decisions, and it proposed that the DE be precluded from proceeding beyond these boundaries in its analyses. As we understand it, at the present time a cost-benefit analysis is carried out on the proposed options being considered for use in corrective action plans under CPSA § 15. Restrictions are imposed on the content of such analyses, and in developing the analyses the DE staff is not to provide a recommendation on disposition of the CPSA § 15 case in question.

In general, we do not believe that the alleged shortcomings of cost-benefit analysis can justify its exclusion from the information to be considered by the Commission, whether the object of the decisional exercise is a standard, a ban, or a proposed enforcement action.

The Chamber would not be so presumptuous as to pass judgment at this juncture on whether any particular economic analysis (or cost-benefit analysis) performed with respect to any specific proposed enforcement action is fair, accurate, or sufficiently comprehensive. But we do believe, from past experience, that the economic perspective should be an integral part of the decisional process not merely in the Commission's standards-making and/or banning activities under CPSA §§ 7–9 but also in compliance and enforcement activities, such as recalls and similar actions undertaken under CPSA § 15, as well. When the Commission orders a recall of some product, the implicit assumption is that consumers will benefit from the recall and that benefits of additional safety will outweigh the costs of the recall. We think the quality of result will be improved if the implicit assumptions the Commissioners presumably entertain in deciding to proceed are stated explicitly in order that they can be criticized or questioned and changed if they need to be.

The need for such evaluations is well illustrated in the context of standards which the Commission now enforces that were promulgated prior to the 1981 Amendments. Many of the standards or bans promulgated in the 1950's, '60's and '70's (including a number adopted by other federal agencies under the Transferred Acts) would not have been promulgated under the present provisions of the CPSA, which prescribes regulatory analyses, mandates findings relating to prevalency of the injury, requires risk identification and a determination of the efficacy of each provision in a proposed standard in alleviating identified priority risks; and which mandates findings relating to the efficacy of private-sector voluntary standards efforts. Moreover, the priorities which resulted in promulgation of many of these old standards are at variance with those applicable today. Still others of these standards or bans have at least some provisions which would not have been included in CPSA-based standards.

Too often in the past, the Commission has automatically applied what it perceived as its enforcement powers to alleged violations of these standards without giving adequate thought to the range of relevant factors. Economic analysis (including cost-benefit analysis) is one way in which the Commission can assess the appropriateness of applying the remedial powers (*i.e.*, recalls and similar actions) it has today under the CPSA in the context of enforcing standards adopted in a different era and context.

The textile flammability standards promulgated under the Flammable Fabrics Act are prime examples of the problem referred to above. Each of these standards prescribes a destructive test which is to be applied to representative samples of textile production. Federal government officials have repeatedly testified that due to the inherent variability of textiles and the features of the flammability test methods prescribed in federal standards, it is a virtual statistical certainty that test failure will occur and that an acceptable level of quality includes a percentage of such materials. The Commission itself has acknowledged that such failures do not *per se* indicate a safety problem requiring remedial action. *See, e.g.*, 16 C.F.R. 1115.10(b); 16 C.F.R. § 1630.81. We believe cost-benefit analysis should be an integral part of the process of determining whether enforcement action in the form of notice or recall should be initiated in these circumstances.

The Briefing Package on the use of cost-benefit analysis in compliance activities indicates that the DC contends that cost-benefit analysis (in the formal sense of that term) not be used in determining whether to initiate enforcement or remedial action under CPSA § 15 or in connection with decisions on whether particular remedial

measures will be sought through consent settlements or corrective action plans. Admittedly, the language of CPSA § 15 leaves room for argument about the extent to which economic considerations are to be taken into account by an administrative law judge (or ultimately the Commission upon review) in determining whether to order notice or retroactive remedial measures (*i.e.*, recall, repair, or replacement) under CPSA § 15(c) and (d). Nevertheless, the various features of these statutory provisions have implicit cost and benefit features suggesting that it is only the methodology for cost-benefit analysis which is unspecified.[2] These factors lead us to conclude that evidence of the relative costs and benefits of these remedial options would normally be considered to one degree or another in formal enforcement proceedings under CPSA § 15. As a matter of policy, the Chamber does not believe the agency should initiate formal legal actions to secure the imposition of remedial orders without having made some assessment of the relative cost and benefits of the relief being sought; nor should the Commission seek to coerce acceptance of settlements obligating respondents to take particular remedial actions voluntarily without regard to their reasonableness. Without suggesting that all such analyses need to be equally comprehensive or that a completed (as opposed to partial) analysis be a prerequisite to initiation of any action, we submit that information of this nature (coupled with conclusions from officials competent in this type of analysis) should be an integral part of most compliance and enforcement decisions.

USE OF VOLUNTARY STANDARDS TO ACCOMPLISH THE COMMISSION'S MISSION

As originally enacted, the CPSA gave voluntary industry standards (as well as federal agency and certain other standards) a unique status. This status was manifested in two primary respects. In initiating a standards-development proceeding, one mandatory aspect of the Commission's Notice was that it set forth "information with respect to any existing standard known to the Commission which may be relevant * * *" CPSA, § 7(b)(3), 15 U.S.C. § 2056(b)(3). Additionally, as an alternative to standards-development through what was to prove to be a time-consuming, cumbersome, and expensive "offeror process," the Commission was authorized to publish an existing voluntary standard as a "proposed consumer product safety rule" where such standard "would eliminate or reduce the unreasonable risk of injury associated with the product * * *" CPSA, § 7(c), 15 U.S.C. § 7(c).

Notwithstanding this Congressional "nudge" in the direction of voluntary standards, the Commission was, from the outset, antagonistic to this means of carrying out its standards-development responsibilities under CPSA § 7. For whatever reasons, the Commission declined the opportunity to acknowledge openly the safety benefits which could flow from widespread or universal voluntary acceptance of standards developed by various industry groups and generally considered the statutory alternative of relying heavily on voluntary industry standards as the basis for the substantive content of "proposed product safety rules" unacceptable. Instead, the Commission appeared to go out of its way to dredge up offerors under CPSA § 7(d)(1) to develop standards.

Almost from the outset, that process proved to be a failure. But rather than acknowledge the fact that its poor record under CPSA § 7 was due in large part to its steadfast refusal to rely to any extent on the existing voluntary standards, the Commission pursued another course. It encouraged and secured the amendment of the CPSA to clarify and/or expand its authority to develop mandatory standards in-house, once again turning a deaf ear to those voices urging greater reliance on the work product of the voluntary standards system. P.L. 94-284, § 7(b); P.L. 95-631, § 3.

With the passage of time and in the face of increasing criticism over its lack of productivity, the Commission eventually determined that it had to give at least lip service to the work product of the voluntary system. But upon close scrutiny, that deference was more cosmetic than real. From the Chamber's perspective, the Commission tended to bully and intimidate the private-sector organizations with whom it purported to be cooperating in developing 100% of what the Commission wanted in a standard as the price for considering it as the basis of a proposed rule.

From the outset, Congress comtemplated (as reflected in CPSA § 7) a standards-development procedure in which the privately developed standard could be published as a "proposed rule" if it met certain prerequisites. Under the statute, no such "proposed rule" could have been promulgated as a final rule without compli-

[2] The definition of a "substantial product hazard" includes factors which concern costs and benefits; under § 15 recall orders the respondent determines whether to repair or replace the product or give a refund; and economic considerations are also obligatory in determining appropriate penalties for violation of § 15 orders.

ance with the notice and comment requirements of 5 U.S.C. § 553, plus the additional requirement that the Commission afford all "interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions". CPSA § 9(a)(2), 15 U.S.C § 2058(a)(2). Additionally, no existing voluntary standard was capable of being transformed into a mandatory rule unless the Commission could make the findings with respect to its necessity, adequacy, and public interest which are the prerequisites for promulgation of any consumer product safety rule, irrespective of its origin (offeror, existing standard, or the CPSA itself). CPSA § 9(c), 15 U.S.C. § 2058(c). In short, even in its original form, the CPSA provided a means for the Commission to rely heavily on the private sector (through reliance on existing voluntary standards) without compromising its independence; tilting excessively or inappropriately toward the private sector; or depriving any segment of the public of the opportunity to express its views as to the adequacy or inadequacy of any particular proposed rule. In all instances, the statute contemplated standards-development would afford the interested public (and the interested federal agencies) the opportunity of participation in the rulmaking process historically conveyed by the Administrative Procedure Act (5 U.S.C § 553) in traditional federal agency rulemaking and then some. Yet it did not work.

While Congress had provided a statutory scheme which the Commission could have employed to take maximum advantage of the existing genius of America (embodied in hundreds of existing voluntary product safety standards), the Commission turned a deaf ear to all appeals that it carry out its § 7 responsibilities in this manner. By 1981, the Chamber had concluded that an eight-year-tryout had been long enough. Accordingly, the Chamber testified then as to its belief that the Commission would never give due deference to existing voluntary standards systems without an amendment to its basic statute.

Considering the Commission's poor track record in this area, the Chamber urged that Congress provide explicit direction in two distinct contexts: (1) the circumstances under which voluntary standards are sufficient to obviate the need for mandatory regulation considering such factors as the substantial compliance with voluntary standards; and (2) the circumstances under which mandatory standards, if any, should be predicated upon the substantive content of existing voluntary standards, with such modifications as may be justified based upon an appropriate rulemaking record.

In response to testimony such as that offered by the Chamber, Congress, in 1981, amended the CPSA so as to mandate reliance on voluntary consumer product safety standards (rather than on mandatory safety standards) whenever compliance with such voluntary standards would eliminate or adequately reduce the risk of injury addressed and whenever it appeared likely that there would be substantial compliance with such voluntary standards. CPSA §§ 7, 9, P.L. 97-35 amending CPSA §§ 7, 9.

The Chamber strongly support the concepts contained in the 1981 Amendments relating to voluntary standards. We recognize that there are critics of the legislation and/or of the Commission who content either that the concept was and is flawed and/or that the Commission itself is shirking its responsibility (while hiding behind these statutory requirements).

The Chamber is not usually in a position to conclude whether a particular standard or a ban should or should not be adopted as to a particular product or risk, and we do not propose to offer any opinions of that nature in this testimony. However, it is unarguable that (1) the Commission did not give adequate attention to the work-product of the voluntary sector before the 1981 amendments were enacted and (2) the Commission was generally ineffective with respect to the mandatory standards and bans pursued or promulgated by it during the 1970's prior to the 1981 Amendments. It is the position of the Chamber that if the mechanism through which the Commission is to carry out its standards-making and banning responsibilities is not yielding the proper results, the fault is not with the statutory provisions under which these functions are to be carried out but in the implementation.

CONCLUSION

In summary, the Chamber is of the view that (1) irrespective of its structural form, there are improvements which can and should be made in the decisional process and operations of the Commission; (2) economic analysis (including cost-benefit analysis) should be an integral part of the decisional process applying to enforcement actions, as well as the standards-setting or rulemaking function; and (3) the statutory provisions which dictate the deference to be paid to voluntary standards should be retained.

Thank you.

QUESTIONS OF SENATOR GORE AND THE ANSWERS

Question. CPSC inaction is alleged to have sent a signal that industry can relax its voluntary safety efforts. Would you agree with that assessments?

Answer. Whether an agency is relatively "active" or "inactive" during a given period of time is usually a more complicated assessment than first meets the eye. Initially, it involves deciding what counts, *i.e.*, lawsuits, consent settlements, recalls, rules, proposed rules, policy statements, etc. Without question there have been a number of government-wide developments (Gramm-Rudman considerations, general emphasis on deregulation, etc.) that have caused industry leaders to assume that mandatory regulation (on most fronts including the CPSC) is less likely now than it was in the 1970's. We have no basis for assuming that this broad perception would lead industry in general to relax voluntary safety efforts. Considering the relatively few products under the CPSC's jurisdiction, such are subject to Federal mandatory safety standards we assume that at any given time the voluntary safety efforts of most consumer product manufacturers are independent of the CPSC's actual or perceived level of activity. It is true that any given industry group may be influenced in its approach to voluntary industry actions (such as standards-setting) by its notion of the likelihood mandatory regulation by a government agency is a serious possibility.

Question. Should section 7 of the Consumer Product Safety Act be amended to allow interested persons the right to request immediate agency review, with subsequent judicial review, of CPSC reliance on voluntary standards? Would the same response apply to a similar proposal to amend the Federal Hazardous Substances Act?

Answer. CPSA § 7, as amended, reflects the broad-based Congressionally-approved policy concerning CPSC reliance on voluntary standards rather than (mandatory) standards, together with the conditions under which this policy is to be applied. However, the step-by-step procedure by which the CPSC is to implement this policy and decide whether mandatory regulation (based upon the language of the voluntary standard or otherwise) is appropriate or inappropriate is contained in CPSA § 9, as amended. Actions of the agency (with respect to rulemaking) which are subject to review are those taken under CPSA § 9, and as to them the statute already provides for judicial review.

The question put to us admits of another construction, one relating to the timing of review. We would oppose statutory amendments which would encourage interlocutory appeal of a decision to identify an existing voluntary standard in the ANPR (§ 9(a)), or a decision to use an existing voluntary standard as the basis for a proposed rule (§ 9(b)), or a decision to use an existing standard as the frame of reference for a regulatory analysis (§ 9(c)). Where these processes are employed in such a way as leads to a decision to formally defer to an existing voluntary standard, and that deferral is to be given preemptive effect, judicial review should be available. The Chamber has, in the past, supported amendment of the CPSA to make it clear that judicial review is available under these circumstances.

By contrast, a general policy decision (whether expressed or implied through absence of formal action) not to seek mandatory regulation of a product or risk (or not to seek such regulation at a given time), should not be reviewable. Allowing the public to appeal any judgment of the Commission not to regulate would amount to a throw-back to previously-revoked provisions of the original CPSA which provided (1) that interested parties could petition the Commission for commencement of rulemaking proceedings; and (2) that denials of such petitions were reviewable by the courts. Even then, the reviewing court's authority was limited to compelling the Commission to initiate a rulemaking proceeding. *See* 15 U.S.C. § 2059, repealed by P.L. 97-35. Government agencies should be run by those appointed, not by individual citizens, citizen's groups, private lawyers, businesses, or judges. Congress admittedly has the power to require the Commission to regulate a particular product or risk through legislation, and that it do so with a prescribed time period. That power should be rarely employed, if ever; and it should not be extended to third parties or to the courts.

Question. Should section 9 of the Consumer Product Safety Act be amended to allow the CPSC to defer to an existing voluntary standard only in situations where a standard actually exists?

Answer. Under the present law, the requisite pedigree of the voluntary standard which is a candidate for CPSC deference depends upon the stage of the proceedings. It is evident from a reading of the statute that less is required at the ANPR or Pro-

posed Rule stage than at the point of final decision. In the final analysis, under CPSA § 9(f)(3)(D), the Commission is barred from promulgating a mandatory rule unless it finds (in the case of a rule which relates to a risk of injury with respect to which persons who would be subject to such rule have *adopted and implemented* a voluntary * * * standard) that compliance (with the voluntary standard) is (1) "not likely to (sufficiently) reduce the risk" or (2) "unlikely to enjoy * * * substantial compliance." In our view, it was not intended that the Commission formally defer to a voluntary standard without sufficient record upon which to predicate the specified findings.

Conversely, the statutory provision which requires, as a prerequisite to promulgation of a mandatory rule, that the Commission affirmatively find that there is no regulation-blocking voluntary standard—is also to be predicated on the evidentiary record in the proceeding. So, while the Commission can give some credence to a draft standard or a not-yet-implemented standard at the ANPR and Proposed Rule stages, promise would need to become reality—and in short order. This is so because the finding of the absence of a rule-blocking voluntary standard (which must virtue of the statute be both *adopted* and *implemented*), is also a decision to be made on the basis of the formal record. If the record is closed before promise becomes reality, that would be the industry's problem. The product manufacturers would be left to request a reviewing court for leave to adduce additional evidence. CPSA § 11(b).

In summary, while the Commission can given some degree of deference to a new, implemented, voluntary standard in the early phases of a proceeding looking toward regulation of a risk, (1) it cannot formally defer to anything other than a standard determined likely to be effective on the basis of the record (consisting of its staff research plus public comments); and (2) it is not precluded from imposing a mandatory rule as a result of the belated (post-record) development and implementation of a voluntary standard. So, there is a relatively narrow window envisioned within which a group interested in self-regulation must either produce or risk mandatory regulation. The statute does not envision a Commission waiting indefinitely for promise to become reality in any situation where the risk itself was such that an ANPR was justified.

Question. Should section 7 of the Consumer Product Safety Act be amended to require that any voluntary standard deferred to by the CPSC be developed through consensus procedures to assure that interested parties are afforded an opportunity to participate in the development of such standards?

Answer. We are aware that some argue that for a voluntary standard to be eligible for Commission deference during any or all phases of a proceeding under CPSA § 9, it should have to be a national consensus standard. We disagree. Under the CPSA as originally enacted, where standards were developed by "officers", notice to and participation by third parties was required. These requirements (once contained in CPSA § 7(d)) were revoked in 1981. *See* P.L. 97-35. CPSA § 9(d)(2) now provides that rules are to be promulgated by resort to 5 U.S.C. § 553, with the additional right (of interested parties) to make oral presentations assured. This provision obviates the need to require the pedigree of an existing standard to include a "consensus" in its development, etc., in order to serve as the basis for a possible mandatory rule (or as a voluntary standard deferred to by the commission).

Question. Should section 9 of the Consumer Product Safety Act be amended to require that a time limit be imposed between the time an advanced notice of proposed rulemaking is published and the proposed rule?

Answer. During the 1970's a number of statutes were enacted by Congress which attempted to mandate the schedule applicable to agency rulemaking from start to finish. *See e.g.*, Noise Control Act of 1972, 42 U.S.C. § 4901, *et seq.* Due to technical, budgetary, legal and other factors, the responsible agencies frequently were unable to meet the schedule; and litigation often followed. From our perspective, the most likely consequence of imposing a time limit between the publication of an ANPR and publication of a Proposed Rule (after which publication there is already a mandated schedule), would be to reduce ANPR's to the absolute minimum. Conceptually, CPSA § 9 is presently designed to require very substantial regulatory analysis once the rulemaking process has begun. One must seriously question whether this Commission could reasonably be expected to complete such tasks within arbitrary time frames; and whether it is in the public interest to create a situation in which the Commission would be discouraged from publishing an ANPR in the first instance where it had doubts about its ability to meet a series of deadlines which would be automatically triggered by such publication.

Senator GORE. I think that is another useful point. I did not have a chance, because of the time constraints, to pursue that with Mr. Pittle. But I think that the distinction you make is a useful one.

And do not read my question as an endorsement of that specific amendment. I think it is a question that has to be asked merely because the standard in the law has not been applied in the correct way, in my view, by the current Commission.

I also agree with the implicit statements today that you do not want to have a structural solution for a problem that is mainly individual or has to do with the people who are there. And I think Mr. Pittle, incidentally, agrees with you on a lot of that, and others do not.

Ms. Fise and Mr. Kimmelman, are both of you testifying?

Mr. KIMMELMAN. We are prepared to consolidate our remarks, Mr. Chairman.

Senator GORE. All right. If you could summarize it, then we will try to do that at this time.

We do have a vote. How many minutes do you think it will require?

Mr. KIMMELMAN. We can put it in five minutes.

Senator GORE. Well, I think that it would probably be discourteous to ask you to do it in less than that, and it would have to be in less than that. So let me have another brief recess and then we will come back and pick up at that point.

[Recess.]

Senator GORE. The subcommittee will come back to order.

Ms. Fise, Mr. Kimmelman, how do you wish to proceed?

STATEMENT OF GENE KIMMELMAN, LEGISLATIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA, ACCOMPANIED BY MARY ELLEN FISE, PRODUCT SAFETY DIRECTOR

Mr. KIMMELMAN. If we may, we would like to consolidate our remarks.

On behalf of the Consumer Federation of America, we really appreciate this opportunity to appear here today. I have a report which we have just completed which, if we may, we would like to submit for the record.[1] It is mentioned in our written statement.

Senator GORE. Without objection, that will be included in full in the record. I have had a chance to look at it and I appreciate your making that available.

Mr. KIMMELMAN. Thank you.

Mr. Chairman, as you know, we have been here many times before you and before your colleagues in the House of Representatives, and we have asked for a much stronger Consumer Product Safety Commission. We have asked for a much better funded agency. And we still believe that this should be done.

But we are here today really with a much more limited focus and frankly, with, a more conservative message for you. We believe the CPSC is undermining the Congressional mandate to promote product safety. We believe the agency is wasting taxpayers' money, and we believe the agency is costing society billions of dollars.

[1] The report is in the Committee files.

We think this is government waste at its worst and we want you to help us clean it up. The CPSC is taking Congress' direction to pressure the private sector to take care of safety problems and subverting private sector incentives to clean up the market by using every excuse imaginable to avoid regulation, letting industry know that it has no reason to act quickly and no reason to invest money for safety.

The result is hundreds of unnecessary deaths, tens of thousands of injuries that could have been avoided each year, and increased litigation, wasting judicial resources and running up the tab for legal fees that could have been avoided. In short, Mr. Chairman, by failing to flex its regulatory muscle the CPSC is weakening private sector safety incentives and costing our society billions and billions of dollars.

We say enough is enough. We recommend that you reign in this agency; that you make it impossible for the agency to hide from safety hazards; and that you make the agency respond strongly and quickly to eliminate unnecessary product dangers.

We want your help to make this agency more efficient, and more cost effective, providing the American people the maximum product safety that their tax dollars can buy.

At this point I would like to leave the rest of my time to Mary Ellen Fise, our Product Safety Director, who will give you some examples of inappropriate agency action identified in our report.

Thank you.

Ms. FISE. I would like to summarize some of the glaring examples of CPSC's inaction and undue reliance on voluntary standards. In our report we highlight seven different problem areas, and I would like to go through just some of those right now.

First, we have heard today that a voluntary standard can be developed so much more quickly than a mandatory standard, and that is one of the advantages of a voluntary standard. Well, that may be the case. It is not always so, particularly when CPSC is involved.

If you look at what has happened with all terrain vehicles, you find it has been two years since the ANPR. They have been waiting and waiting for this voluntary standard. The standard that was produced is inadequate and, after two years, we still have not solved the problem by means of a voluntary standard.

Another case example is home playground equipment. Thousands of children get injured seriously enough to be taken to the hospital emergency room each year. A voluntary standard was begun in 1979, and today that standard has not gone through final balloting. Yet, the Commission has been willing to sit back and wait.

Turning to another problem, the Commission has deferred to inadequate standards or standards that do not address the risk. For example, there is a voluntary standard for cigarette lighters. 200 people die every year from cigarette lighters.

But that voluntary standard does not address child resistance, and 125 of the 200 people who die each year are young children. So that is just one example where the Commission is willing to sit back and acquiesce to a voluntary standard that does not address the risk.

The third problem I would like to talk about is a reliance on the non-existing voluntary standards. And in your questioning you have alluded to this problem whereby the Commission is sitting back and waiting until the standard gets developed. A good case example of this is swimming pool covers.

In 1980 CPSC became concerned about this issue. They received two petitions in 1983 requesting a mandatory standard. In the meantime, they were having discussions with the industry: in effect asking them, would you develop a voluntary standard?

In April of 1986, six years later, the industry came back and said: We have decided we are not going to develop a voluntary standard at all. The Commission is now in a position where, if they want to do something, they would have to start the whole regulatory time clock running.

They have never published an ANPR. Had they done that a long time ago, we would be much further along and hopefully have solved this problem.

And finally, we want this committee to look at the deferral to non-consensus developed standards. There are examples documented in our report where the Commission has deferred to standards developed solely by industry. If you look at the legislative history of the 1981 amendments, it refers to nationally recognized consensus standards, including all the interested parties: consumer groups, retailers, manufacturers, academics who have done research, bringing all these parties together.

We have documented this problem in the case of bunk beds and in the case of pressed wood (formaldehyde emissions), where the Commission has deferred to a standard developed solely by industry without any input from other interested parties. And we allege that these standards are also inadequate.

I will stop right here and be happy to answer questions. But I would like to just point out that the examples that we have included in our report should not be seen as the only problems. We have used these because they illustrate the problems very clearly. There are others that exist at the Commission.

Thank you.

[The statement and questions and answers follow:]

STATEMENT OF MARY ELLEN FISE, PRODUCT SAFETY DIRECTOR, CONSUMER FEDERATION OF AMERICA

Mr. Chairman and members of the Subcommittee, I am Mary Ellen Fise, Product Safety Director for the Consumer Federation of America. CFA represents over 200 national, state and local consumer organizations with a combined membership of more than 30 million people.

I want to thank you for the opportunity to present our views on reauthorization of the U.S. Consumer Product Safety Commission (CPSC).

As the nation's largest consumer advocacy organization, CFA has carefully watched—with great dismay—the significant decline of a critical health and safety agency. By dragging its feet and increasingly avoiding regulatory intervention, the CPSC has signalled to industry that it need not act expeditiously or even effectively to address consumer safety problems. Adequate safety measures have been sacrificed by an agency eager to defer to industry—apparently at almost any cost.

Once considered among the government's most cost-effective agencies, the CPSC's recent track record reflects an agency frustrating its very purpose and squandering taxpayer dollars as a result.

CFA is presenting today a report entitled "The CPSC: Guiding or Hiding From Product Safety?" We urge the Subcommittee to examine the findings of the report

and to carefully consider CFA recommendations in the course of agency reauthorization.

"THE CPSC: GUIDING OR HIDING FROM PRODUCT SAFETY?"—A CFA REPORT

A product of careful examination by CFA, *"The CPSC: Guiding or Hiding From Product Safety?"* finds an agency failing in its mission to protect consumers from exposure to hazardous products. The report documents the recent unwillingness of the CPSC to either regulate or enhance private sector safety initiatives and the resulting costs to this nation.

Over the past six years, the CPSC has demonstrated an increasing reluctance for regulatory intervention. Rulemaking has drastically diminished; in fact, the report finds that the *agency has not promulgated a final rule under the Consumer Product Safety Act (CPSA) since 1984.* By removing this threat of government intervention, the incentive for timely private sector response has been quickly lost. So, while the agency drags its feet waiting for industry to act, thousands of people continue to be injured and killed by hazardous products that remain needlessly in the marketplace.

Productivity and efficiency within the CPSC have also dropped accordingly. Commission consideration of safety issues has plummeted in the past six years, evidenced by the alarming cancellation rate of Commission meetings and the number of safety issues considered. 1986 witnessed a *650% increase* over 1979 in the *number of meetings cancelled* by the Commission. In 1979, the CPSC considered 237 agenda items; in 1986, only 80.

In 1981, Congress amended the CPSA to permit agency deference to voluntary standards, with the intent of spurring private sector initiatives for product safety and avoiding duplication. Yet, the agency's current over-zealousness to defer to voluntary standards—apparently at nearly any cost—has resulted in its failure to effectively and expeditiously address dangerous consumer products. This can hardly be what Congress intended in 1981. Nor is it feasible to believe that Congress intended the consequent costs of such inaction: thousands of lives and tens of thousands of serious injuries, billions of dollars, and increased product liability litigation. But that is where we find ourselves today.

A DISTURBING RECORD OF CPSC INACTION

CPSC's recent disturbing record is best illustrated by the products it has failed to regulate.

All Terrain Vehicles (ATVs) have *killed* more than *700* people and seriously *injured* over *298,000* since 1980. Sales of these motorized vehicles have jumped dramatically over the past several years. Their popularity however has been accompanied by a staggering increase in deaths and injuries, with nearly half of the victims estimated to be under 16 years of age. As the chart below graphically demonstrates, injuries treated in hospital emergency rooms have skyrocketed from 4,929 in 1980 to 86,400 in 1985. The death toll too has risen dramatically: in 1980 there were 6 deaths; in 1985, 244 deaths.

ATV CAUSED DEATHS AND INJURIES

	Deaths	Injuries
1980	6	4,929
1981	1	6,008
1982	26	8,585
1983	82	26,900
1984	140	63,900
1985	244	85,900
1986	195	86,400
1987 (through Mar 2)	9	[1] 15,400
Total	703	298,022

[1] Through Mar 31

It is hard to imagine a better case for swift intervention by the agency. Yet CPSC has refused to take strong regulatory steps, waiting instead for industry to act. The wait for a voluntary standard has been long and perhaps for naught, as CPSC's own staff now appear to consider the proposed industry standard inadequate. Thus, two

years after publishing an Advance Notice of Proposed Rulemaking (ANPR), these highly dangerous vehicles remain on the market—sold, without restraint.

The CPSC failure to intervene and to push industry for expeditious and adequate protection reflects the agency at its worst, where its pattern of excessive delay an inaction has resulted in continuing deaths, injuries, and costly product liability litigation. In the first three months of 1987 alone, 15,400 more people have been severely injured by ATVs. How much more time must pass and how many more people must die and be injured before the agency regulates effectively and efficiently?

Disposable (Butane) Cigarette Lighters Kill an estimated 200 people every year, including 125 children under five years of age.

These young children die because there is no standard which directly addresses the risk posed by these lighters. Yet rather than intervening to render these lighters child-resistant, CPSC has waited for industry response. None has been forthcoming. And, despite the findings of its own staff, CPSC has *still not undertaken even* the very basic step of issuing an ANPR.

Deferral to an inadequate standard and failure to push industry for effective action mean that children's deaths and injuries continue to mount. Just last week, in Paducah, Kentucky, a four year old child set fire to her house with a disposable lighter; the result: one more person dead and two more people severely injured.

Swimming pool covers have been responsible for 26 deaths, when people have drowned under partially removed covers or in water that accumulated on top of the covers. Many of these covers are marketed as "safety" covers, yet consumers are not warned of the hazards of walking on or swimming under them.

CPSC has been *aware of these hazards since 1980.* But, "hoping" that the private sector would someday develop a responsive safety initiative, the agency has deferred action to what is best characterized as a "non-existing standard." Six years later, CPSC is *still waiting* for industry to act. There is neither a mandatory standard nor a voluntary one to prevent more injuries and more deaths.

Accordian-style baby gates have killed at least 8 young children, when their heads or necks became trapped in diamond-or v-shaped openings of the gates. Manufacture of these gates was halted in early 1985. Yet approximately 15 million of these gates remain available for use by parents, unaware of the hazards. Despite the danger posed, CPSC has never taken action to recall these gates. This is but another example of CPSC inaction despite the fact that use of its regulatory authority is warranted and critical. Without CPSC intervention, there is no other hope of effectively protecting thousands of toddlers from being killed or maimed by these gates.

COST OF CPSC INACTION

Reviewing these and numerous other examples, the report concludes that CPSC inaction has meant a waste of taxpayer dollars and needless costs to this nation of thousands of lives, tens of thousands of injuries and billions of dollars. The agency's failure to act appropriately has also spawned increased litigation. There are now over 350 cases of ATV-related litigation alone, costing millions in litigation expenses, lawyers fees and damages awarded. CFA strongly believes that these costs may have been prevented by appropriate regulatory intervention, if the CPSC carried out its mandate.

The agency must be reigned in and steps taken to improve its practices and procedures to prevent its continued foot-dragging and avoidance of adequate and timely protection. In addition to careful scrutiny of CPSC action by Congress, CFA also urges amendments to the Consumer Product Safety Act that:

Allow agency deferral only to voluntary standards already in place;

Allow deferral only to standards devised with consultation from all interested parties;

Place reasonable time limitations for reviewing the need to issue proposed rules; and

Allow the public to challenge agency delays in its evaluation of private sector initiatives.

Without rigorous oversight and effective streamlining, CPSC will continue to squander taxpayer dollars as an ineffective public safety agency.

INDOOR AIR QUALITY: MUST BE A CPSC PRIORITY

Indoor air pollution represents the number one hidden environmental health threat to our society—each year killing thousands of Americans and injuring millions more. The CPSC authority to set standards for consumer products plays a most critical role in controlling home exposure to indoor pollutants. Consumer products

such as pressed wood (formaldehyde), kerosene heaters, paint strippers (methylene chloride), household cleaners and asbestos-containing products, just some of the major contributors to indoor pollution, are within the CPSC jurisdiction.

As our report today illustrates, formaldehyde emissions from pressed wood are yet another example of the CPSC failure to take regulatory action. Despite the adverse health effects of this probable human carcinogen, the agency still defers to an inadequate voluntary standard.

Indoor air pollution warrants the careful attention and resources of CPSC. To this end, CFA has requested the agency to designate indoor air pollution as a priority for FY 1989. CFA also strongly believes that the seriousness of indoor air pollution coupled with the agency's recent failures to initiate rulemaking warrant the rigorous oversight of this Subcommittee in the course of reauthorization. We urge Congress to carefully scrutinize the agency's actions and to direct the agency to proceed expeditiously to reduce consumer exposure to the hazards of formaldehyde, asbestos, methylene chloride and other dangerous chemicals.

AMUSEMENT PARK JURISDICTION

CFA also urges this Subcommittee in the course of reauthorization to expand CPSC's jurisdiction to include fixed-site amusement park rides. The current law gives CPSC jurisdiction over rides that travel from location to location, but not over fixed-site rides. This inconsistency unnecessarily places consumers in greater danger.

There are approximately 600 fixed-site theme and amusement parks that attract over 200 million people every year and in the past, many park visitors have been treated to tragedy rather than the thrills and fun they sought. Over 10,000 serious injuries related to amusement park rides are recorded every year. In the last decade, nearly one hundred people have died as a result of amusement park rides. These injuries and deaths resulted from faulty door latches and restraints, defective parts and improper maintanance.

When federal jurisdiction over fixed-site amusement rides was repealed in 1981, the burden of protecting consumers fell on the states. Unfortunately, *22 states still provide no protection at all.* Expanded CPSC jurisdiction is also needed over the 28 states that do have requirements, since these regulations vary widely, with many states merely requiring insurance coverage.

Amusement park ride safety is a nationwide problem which requires nationwide solutions. We urge Congress to restore full authority to the CPSC to investigate *all amusement park hazards,* in order to prevent needless deaths, injuries and expensive litigation.

SECTION 6(b) REQUIREMENTS INFORMATION DISCLOSURE

Since 1981, Section 6(b) of the Consumer Product Safety Act has severely limited timely CPSC response to Freedom of Information Act (FOIA) requests, by involving the agency in a cumbersome, costly and unnecessary morass of disclosure requirements.

Section 6(b) provides a manufacturer with substantial rights to limit the Commission's response to a FOIA request for information which could reveal the identity of the manufacturer. Before information can be released to the public, the CPSC must contact the manufacturer, provide 30 days within which the manufacturer may comment on the information and then review both the information and manufacturer's response for accuracy. This arduous process has resulted in delayed CPSC response to the FOIA requests. According to the agency's own statistics, it is now able to process only about 60% of FOIA requests within the statutorily mandated 10 day period, taking months and sometimes years to process 100% of all FOIA requests. *No other federal health and safety agency* is subject to these restrictive limitations imposed by Section 6(b).

The *result:* The burdensome provisions of Section 6(b) have dramatically slowed the release of often critical safety information to the public. This failure to release safety information and alert the public to potential hazards in a timely manner only increased the potential for additional serious injuries.

We urge this Subcommittee to review the time-consuming and ultimately costly restrictions of Section 6(b) and amend this section so as to assure *timely* release of safety information in response to a FOIA request. This will enable the agency to use its time and limited resources on safety-related activities.

AUTHORIZATION AND PERSONNEL FLOOR

In 1981, the CPSC had nearly 900 FTE's and a budget of more than $42 million dollars. Over the past six years, the CPSC has witnessed drastic reductions in its budget by an Administeration intent on abolishing the agency or at least bleeding it to death. The consequences has been a 30% reduction in CPSC funding since 1981.

CFA urges Congress to prevent any further budget reductions for this agency and where appropriate, restore cuts to increase agency effectiveness. CFA urges this Subcommittee to stop the hemorrhaging of this agency.

Cessation of further funding cuts must be coupled with cessation of further personnel cuts. While Congress has signalled through its appropriations that it will not tolerate further crippling of the agency, resisting this deeper cuts proposed by the Administration, the Office of Management and Budget (OMB) continues to bleed the agency nontheless by cutting personnel. Since 1981, there has been at least a 40% reduction in full time staff at the CPSC. What OMB could not do through the front door (budget process), it has done through the back door (staff cuts).

CFA urges Congress to intercede and stop the decimation of this agency by setting a personnel floor at least at current levels. Although an extraordinary Congressional step, it is a measure fully warranted by the circumstances if there is any hope at all for CPSC success. Any additional cuts in funding and personnel would assure the inability of this already battered agency to respond to emerging product hazards and to threats to public health and safety.

To preserve the integrity and very purpose of this agency, CFA recommends that the reauthorization bill passed by this Subcommittee prohibit any cuts in agency authorization and preclude any personnel cuts by setting a personnel floor for CPSC at current levels.

CONCLUSION

Mr. Chairman and members of the Subcommittee, CFA believes this reauthorization is critical opportunity to reign in this agency and to offer this nation effective health and safety protection. The recommendations presented today are reasonable steps to that end. We urge this Subcommittee to seriously consider these recommendations in order, to put this agency back on track as an effective watchdog for consumer safety. Thank you.

QUESTIONS OF SENATOR GORE AND THE ANSWERS

Question 1. Under current law, parties are required to admit, in effect, that their product may have a defect when they report a potential hazard to the CPSC. Should this be changed and why?

Answer. Consumer Federation of America (CFA) believes that the notification and recall provision of section 15 of the Consumer Product Safety Act represents one of the most important tools that CPSC can utilize in order to protect consumers from unsafe products. The key words in your question are "may have a defect." Section 15 of the CPSA requires that manufacturers report to CPSC when they obtain information which reasonably supports the conclusion that the product contains a defect. The regulations interpreting this section state that: "Information which should be or has been reported under section 15(b) of the CPSA does not automatically indicate the presence of a substantial product hazard." [See 16 C.F.R. sec. 1115.12(f)] Further these regulations state that: "A subject firm in its report to the Commission need not admit or may specifically deny that the information its submits reasonably supports the conclusion that its consumer product is noncomplying or contains a defect which could create a substantial product hazard within the meaning of section 15(b) of the CPSA." [See 16 C.F.R. sec.1115.12(a)]

CFA believes that section 15 and its corresponding regulations do not place any undeserving burden on manufacturers. Rather, the purpose of the act and regulations is to facilitate timely and adequate reporting. Former Commissioner Stuart Statler has advocated (in testimony before this Subcommittee) an expansion of the incidences that would trigger a report by a manufacturer, including:

Malfunctioning products likely to cause or contribute to death or serious injury if the malfunction were to recur;

Products that are the subject of a liability claim or lawsuit involving a death or injury;

Failure to comply with federal or voluntary safety standard; and

Product contains a defect or otherwise presents a substantial risk of injury.

CFA believes that the manufacturer's right to specifically deny that the information it submits reasonably supports the conclusion that the consumer product contains a defect addresses Mr. Statler's concern that responsible parties will fail to report because of an admission that the product may have a defect.

Like Mr. Statler, CFA strongly supports other changes that would serve to expand the number of reports of unsafe products. In addition to the suggestion discussed above, one way of accomplishing this would be for the Commission to be directed to issue a substantive rule under section 16(b) that specifically enumerates when section 15 reporting is required. The current regulations [contained in 16 C.F.R. sec. 1115] are interpretive and therefore do not carry the same weight. A substantive rule regarding reporting would significantly increase reports since everyone would be required to report and the fear of being the first to report would be eliminated. CFA strongly urges the Subcommittee to consider this recommendation. Without a strong early warning system, CPSC will be months (and possibly even years) behind the deaths and injuries that result from products that need to be recalled.

Question 2. How do you justify your criticism of the CPSC's deference to such standards, given the emphasis in the 1981 Consumer Product Safety Act amendments on the importance of voluntary standards?

Answer. CFA believes that voluntary safety standards play an important role in protecting consumers. We do not oppose the development of voluntary standards and we do not oppose CPSC's deference to them as outlined in the 1981 Amendments. However, CEA believes that CPSC has not applied the 1981 amendment regarding voluntary standards in the manner and spirit envisioned by Congress when that change was made.

As we testified and as our report on CPSC (The CPSC: Guiding or Hiding from Product Safety?) indicates, CFA believes that the Commission has used the requirement to defer to voluntary standards as an excuse to do nothing. Inordinate delays, hundreds of deaths, and hundreds of thousands of injuries have occurred while CPSC has waited and waited for voluntary standards to be developed. Weak voluntary standards that the Commission's own staff have admitted do not address the risk of injury have been deferred to, as have been standards developed solely by industries that refuse to have public participation.

CFA believes that the 1981 amendment on voluntary standards was intended to be one that would allow the agency to save scarce resources and one which would allow safety problems to the addressed in a more expeditious manner, thereby saving more lives and preventing more injuries. Unfortunately that has not been the case; but, that does not have to be the case in the future. CFA believes that the changes it has suggested to tighten up sections 7 and 9 along with a provision to allow any interested party to challenge undue reliance, coupled with rigorous oversight by this Subcommittee can get this agency back on track again.

Question 3. Do you agree with those who contend that the CPSC coerces "voluntary" action by manufacturers and that cost-benefit analysis would inject more fairness into the process?

Answer. CFA strongly disagrees with the contention that CPSC coerces "voluntary" action by manufacturers and we strongly disagree with the notion that cost-benefit analysis is the soluation.

CFA believe that voluntary remedial actions, such as corrective action plans, serve the purpose of notifying the public more expeditiously of a substantial product hazard. CPSC does not cavalierly initiate such voluntary remedial actions, but rather bases its action on evidence it has collected as to the hazardous nature of the product and the need to take action to reduce the risk to consumers. If a manufacturer chooses not to enter into such an agreement, CPSC can then issue a complaint. The option to agree is the manufacturer's; if he does not believe the case is warranted, he can refuse. CPSC is an agency with severely limited resources, particularly in light of the fact that it oversees over 15,000 consumer products. CFA does not believe that frivolous cases without merit are being initiated. Manufacturers are not being coerced, but ratehr are being told to comply with the law.

CFA opposes the use of formal cost-benefit analysis in section 15 actions. While informal consideration of costs and benefits as one of many factors taken into account is not objectionable, we do not support the type of analysis proposed by the current CPSC Associate Executive Director for Economics. The undercalculation of benefits due to factors inherently unknown at the time of the section 15 action will result in recommendations against such action. Further, such formalized analysis would have a chilling effect on voluntary actions initiated by manufacturers. Given the change to supply data on the cost of a recall or other corrective action or the opportunity to take the change that the numbers come out in their favor, manufacturers will be disinclined to initiate measures on their own. All in all, recalls are

likely to decrease or be significantly delayed under a system that requires a formal cost-benefit analysis. The CPSA does not require such analysis in section 15 actions and this has proven to be an area that needs no change.

Senator GORE. Thank you very much. I appreciate it.

In other words, you believe that the deference to voluntary standards by the current Commission has been inappropriate in several respects?

Mr. KIMMELMAN. We believe it does not further safety, because there is no stick behind it. A voluntary standard can work well if there is an incentive to develop it, if there is a need to do it quickly, if there is a reason to invest the money in improving the product.

As far as we can see, the message from the Commission to industry reads: do not worry, we are not going to regulate you. You can discuss problems, we can talk about voluntary standards, but do not worry; there is no need to act.

And we think that is inappropriate.

Senator GORE. Mr. Gimer, you essentially agree that the prospect of a mandatory standard can be used as a part of the process to encourage a better voluntary standard, and when the system is working then the industry is more forthcoming and those irresponsible members who may not want to come forward with an adequate standard can still be presented with the prospect of a mandatory standard as part of the process, correct?

Mr. GIMER. That is correct, Senator. The statutory scheme contemplates an advance notice phase concept, an internal analysis phase, and a final rulemaking phase, and it provides that the judgment about the existence of and adequacy of a relevant voluntary standard is something that has to be looked at at each stage.

And by definition, when you start the process with the advanced notice of proposed rule making it can have as an outcome a mandatory standard.

Senator GORE. As I understand it, you three are in essential agreement that the 1981 amendment on voluntary standards is not really at fault in the current situation; it is the way the law is being applied, am I correct?

Mr. KIMMELMAN. That is correct, Mr. Chairman. We can see ways in which the law could be used as a valuable resource to promote safety and to make voluntary standards work. Because of the way the law has been misapplied, however, there is a need for Congress to step in.

It appears that just asking the agency to interpret the law in the way we believe Congress meant for it to be interpreted is not enough.

Senator GORE. Well, that is a different point, though. If you had a Commission that was interpreting the law correctly and implementing it correctly, you might not need any statutory change. But if you come to the reluctant conclusion that the Commission is simply not going to do its job well, then you face a choice of continuing to plead with them or trying to encourage them to do it right, or else coming to the point where you just take statutory action.

Mr. KIMMELMAN. That is correct, Mr. Chairman. There are instances—the swimming pool cover example—where the Commis-

sion denies a petition for a rulemaking, and then turns around to say that it would like to see industry develop some kind of a voluntary standard.

Well, from our perspective that does not quite send a signal of dire need to do something, the Commission having already acknowledged that it is not going to do anything in a regulatory proceeding.

Senator GORE. Well, I would like to pursue a number of issues with the three of you, but because of the time constraints and because our other witnesses have been waiting so long, I am going to submit those other questions for the record, as will my colleagues.

Senator GORE. I would like to thank all three of you for excellent testimony. I think it has been very helpful. We appreciate it very much.

Our final panel is invited to the witness table at this time: Ms. Ann Brown, Chairperson of the Consumer Affairs Committee of Americans for Democratic Action; Mr. Alan Isley, President of the Specialty Vehicle Institute of America in Arlington, Virginia; Dr. John Morris, Director of the Division of Trauma with Vanderbilt University Medical Center in Nashville, Tennessee; and Mr. Douglas Thomson, President of the Toy Manufacturers of America in New York City.

I would like to welcome all of you and again, if you could summarize your prepared statements, we would appreciate it.

I will call witnesses in the same order I called you to the table, and that means we will begin with you, Ms. Brown. Without objection, the prepared comments of all of the witnesses will be included in full in the record.

STATEMENTS OF ANN BROWN, CONSUMER AFFAIRS COMMITTEE OF AMERICANS FOR DEMOCRATIC ACTION; DR. JOHN A. MORRIS, DIRECTOR, DIVISION OF TRAUMA, VANDERBILT MEDICAL CENTER; ALAN R. ISLEY, PRESIDENT, SPECIALTY VEHICLE INSTITUTE OF AMERICA; AND DOUGLAS THOMSON, PRESIDENT, TOY MANUFACTURERS OF AMERICA

Ms. BROWN. Thank you. I am Ann Brown, Chairperson of the Consumer Affairs Committee of Americans for Democratic Action. I am going to very briefly summarize.

We have been involved in toy safety and product safety for 15 years and have done a toy survey at Christmastime which has been a very valuable service to consumers. So I represent the actual folks who are out there. We have been a watchdog over the Consumer Product Safety Commission for this amount of time, but we are now not a watchdog over anything, not even a pussycat.

The present CPSC is impotent and ineffective. It lacks the will to do even the most basic protection of consumers, especially the protection of consumers who are children. We must realize that we have to speak up for children especially because they cannot speak up for themselves.

The only kind of concern that the agency really seems now is to put the burden on parents and toy purchasers. The only action that they take is to educate, warn or cajole. I do not know if you have ever been in the Toys "R" Us at Christmastime and tried to re-

member your own name plus a lot of toy warnings, but it is almost impossible in that hectic atmosphere.

During, Commissioner Scanlon's remarks at the Holiday Safety Press Conference held in 1986 at the elegant Willard Hotel. he talked about the deaths of 148 children just from balloons, small balls and marbles alone. Commissioner Scanlon courageously said, as parents and guardians, it is up to you to make certain accidents of this nature do not occur. Proper toy selection and supervision are a must."

The *New York Times* quoted Commissioner Scanlon again upon opening National Baby Safety Week. Commissioner Scanlon stressed that the ultimate responsibility rested with the parents. He said the aim of that week was to emphasize to parents and expected parents the need for increasing their awareness of product safety by careful selection, maintenance and use of nursery equipment; not a word about how to protect the babies at all except on the parents' part.

Commissioner Scanlon loves to hold press conferences with the associations of those he regulates. This happens with the Juvenile Products people and, of course, with the Toy Manufacturers of America. It was a regular horse and pony show at the TMA Commission-sponsored press conference. This year they had dancers, really, since there was not much to report about in the way of toy protection.

In many cases, the CPSC is so lethargic that even the industry is a step ahead of the agency. In response to our report we brought out about a toy with sharp edges manufactured by Lash Tamaron industries—it had a little comb given to children which had a sharp and lethal point—we called Toys "R" Us because Lash Tamaron manufactures it exclusively for Toys "R" Us. Upon our telephone call, Toy's "R" Us removed the toy from their shelves, all of their shelves all over the country. They did not question why. They thought when a respected consumer group had concerns, that was what should be done immediately, was to remove it. They did not hesitate for a second.

Because of the inaction of the CPSC, we are an avenue of consumer complaints. We are a veritable repository of them now. Consumers do not really know what ADA is. They think we are the American Dentistry Association, or the American Dietetic Association, but they know they get results, and that is what they are looking for.

We received one complaint about a doll, the Koosa doll which is the stuffed animal of the Koosa family. A child had put it around her neck, and its collar was designed so that when you pulled the collar it just held still. It did not release. We immediately investigated this complaint by a Californian. In our investigation, we recommended and reported that it was a danger to have such a designed collar.

Ms. Pickart, the one who complained to us, wrote to the CPSC, and they sent back a form letter to her with the not-very-encouraging salutation "dear correspondent'. The letter asked her to check the facts of her complaint. She was immediately discouraged, and she wrote us.

Coleco changed the design of the collar so that they now have a collar that you can whip open just like this. They were much more responsive than the CPSC.

Another potential danger of namby-pamby hazards that we found is Comfy Seat. The package says "ideal for high chair, bathtub or stroller. We found that this seat is flammable". It is a fire trap for children. The package shows a happy baby. That was before the baby was burned. They recommend that you put it in the stroller or the high chair, but then it says on the back "caution, sponge materials, flammable, keep away from fire and open flame." So, in fact, to have this in the kitchen in a high chair or near a parent who smokes is devastating. It should never be allowed to remain on the market at all.

Finally, there are so many areas about which there are concerns. Baby walkers are one. What you see right here is a baby walker, and most parents put their babies in this. Dr. James Downey, a prominent Chicago pediatrician, said if God meant little kids to roll around he would have put little wheels on their feet. Not a year goes by that we do not see a broken leg or a fractured skull on kids that are in these walkers. They result in injury, hospitalization and a terrible experience for parent and child.

Not only that, the literature tells us that children in walkers do not develop as well as children who are not in walkers. What is the CPSC doing about this pressing problem where their own statistics show over 123,000 injuries in 1984 from these? A voluntary standard is being worked on by the CPSC and the JPMA and the ASTM. But at this point we have been told it has been worked on for several years and we do not know when it will be adopted.

What is out there on the market now? This week we could buy unlabeled toys that should not be there. This is a little block in a matchbox. First of all, toys should never be in a matchbox as a precedent for children. They are smaller than the CPSC's own small parts standard. They are out there in the Washington area toy stores right now with no age warning on the label at all.

Another toy exactly like that, purchased at a Washington area toy store this week, with small balls and toy soldiers in it, no warning, and it is right out there.

We have a very dangerous situation, Senator, for your children and all the children of America.

[The statement follows:]

STATEMENT OF ANN BROWN, CONSUMER AFFAIRS COMMITTEE, AMERICANS FOR DEMOCRATIC ACTION

I am Ann Brown, Chairman of the Consumer Affairs Committee of Americans for Democratic Action. I am also Vice President of Consumer Federation of America. and Chairman of the Board of Public Voice.

The Consumer Affairs Committee of Americans for Democratic Action has been a watchdog of the Consumer Product Safety Commission for lo these fifteen years. Our Committee has been involved in many aspects of product safety, especially the safety of children's toys and children's products. For the past fifteen years, we have released at Christmas time a much noted and needed Toy Quality and Safety Report.

This watchdog, however, is watching over a shadow, a ghost, not even a pussycat.

The present CPSC is impotent and ineffective. It lacks the will to do even the most basic protection of consumers, especially consumers who are children. We

mustn't forget that of all the world's consumers, those that need the most protecting are those that can't speak for themselves—babies and children.

This Consumer Product Safety Commission does only what it is forced to do. When there are a pile of dead babies, when there is a dead body, the agency will take some action—sometimes. Otherwise, this CPSC is more concerned with protecting the business interests than protecting the safety of children.

For example, our Committee sent to the CPSC a report we published detailing the dangers of infant pacifiers. One paragraph of their answer to our Committee read as follows:

"Through consumer complaints, the CPSC has become aware of a problem of the nipples and handles separating from the shields of pacifiers. CPSC staff has been in touch with the importer of one brand that was frequently reported as having this problem, and we believe the problem has been corrected through redesign of the pacifier. No deaths involving these pacifiers have been reported."

Thus—no deaths—no action.

This agency's primary concern is to put the burden on parents and toy purchasers. The only kind or real action they do is to try to educate, to warn, to cajole.

I don't know how many of you have been in a toy store at Christmas time, but I know that the Consumer Product Safety Commissioners cannot have been there recently. Don't try to remember safety warnings at Christmas time in a Toys "R" Us. In that hectic atmosphere, try to remember your own name. It's a challenge.

Here are some quotes from Commissioner Terrence Scanlon's remaks at the Holiday Safety Press Conference held on November 18, 1986, at the very elegant Willard Hotel under the crystal chandeliers in Washington, D.C.

In talking about, the death of at least 148 children just from balloons, small balls and marbles alone, Commissioner Scanlon courageously said, "As parents and guardians, it is up to you, to make certain accidents of this nature do not occur. Proper toy selection and supervision are a must."

Commissioner Scanlon went on to say "over 123,000 accidents were associated with toys last year. Fortunately, the vast majority of these were minor. Roughly ⅔ of all reported were only lacerations, contusions and abrasions. Generally speaking these were the result of children falling off, over or into a toy." This time the blame is on the kid, not on the parent.

Finally, in talking about the 22 children who died last year as a result of accidents involving toys, Commissioner Scanlon admitted, many of these accidents could have been prevented.

He went on to say, "misuse, carelessness, lack of understanding and a whole host of other things can cause accidents as well. What it suggests is all of us, we at the CPSC as well as parents, can't relax for a moment when it comes to toy safety."

The only problem is, the CPSC has not only relaxed, it has become anesthetized. This is not a matter of lack of money or however many commissioners the CPSC has. This is simply a matter of lack of will.

On Wednesday, September 10, 1986, the N.Y. Times quoted Commissioner Scanlon's remarks upon opening National Baby Safety Week. Commissioner Scanlon stressed that ultimate responsibility rested with the parent. He said the aim of the National Baby Safety Week was "to emphasize to parents and expectant parents the need for increasing their awareness of product safety by careful selection, use and maintenance of nursery equipment." He was speaking at a news conference co-sponsored by the Commission and the Juvenile Products Manufacturers Association, a group that represents the makers of playpens, strollers, cribs and similar products.

Commissioner Scanlon loves to hold press conferences with the associations of those he supposedly regulates. Juvenile products is one area that the CPSC is supposed to regulate.

The other area, of course, is toys. Commissioner Scanlon held a Christmas Toy Safety Press Conference in conjunction with the Toy Manufacturers of America last year and this year.

This year the press conference held at the Willard Hotel in Washington, D.C., was a veritable horse and pony show. The idea of holding a press conference with the heads of the industry you are supposed to regulate is surely being in bed with that industry. The TMA donated both press kit covers and the dancers who danced for the assembled reporters. Why the reporters needed dancers, or why there needed to be a Santa Claus at the press conference I cannot imagine. Perhaps it was to make up for the lack of news of actual protection. True, there were plenty of warnings, but very little consumer protection.

Commissioner Scanlon said that holding these press conferences is a wonderful way to gain industry cooperation with the CPSC. But when the CPSC filed a complaint against Johnson & Johnson seeking the recall of 1.6 million stuffed crib toys,

that had caused the death of two babies, Johnson & Johnson refused to voluntarily recall the crib toy. The CPSC had to go to court for the recall of the crib toy. How is that for cooperation?

In many cases, however the CPSC is so lethargic that even Industry is a step ahead of the agency. For example, the 1986 Toy Report of the Consumer Affairs Committee, found a beauty set with sharp edges and a dangerous point, manufactured by Lash Tamaron Distributors. This is a product that is manufactured exclusively for Toys "R" Us. Our Committee telephoned Toys "R" Us to inform them about this beauty set which had a long and potentially dangerous point on the toy rattail comb. The package said "Caution, not recommended for children under 3 years old." Despite the warning the question was—Why give any child a toy that has a pointed dagger?

Toys "R" Us didn't hesitate for a second. The officials immediately recalled the Beauty Set from its shelves, all of its shelves, all over the country. Their philosophy was—if a respected consumer group thought this toy was dangerous let's get the toy off the shelf first and debate later. This is certainly not the attitude of the CPSC.

Another toy that our Consumer Committee noted could be potentially dangerous this year was the Stack and Pop Toy manufactured by Discovery Toys. Discovery Toys are the Tupperware of the toy industry, an up and coming and aggressive company that sells toys in the home. They are also a very safety-conscious company.

Our Committee has become the repository of consumer complaints because of the dissatisfaction consumers find with the CPSC. Therefore, they turn to a small grass roots committee, such as ours, who they know will do something about their complaints.

We received several complaints about the Stack and Pop Toy. Our experts decided that, in fact, this colorful stacking item, when the plunger is pressed and released, has plastic objects that go flying off the plunger with considerable force and could pose a potential danger to any child's eyes and face.

Lane Nemeth, the President of the company, was horrified to find her toy on the ADA list and requested and had a personel meeting with me. She did not agree that the toy posed a danger, but in fact, agreed that although they were going to sell the few remaining Stack and Pop toys that were in the warehouse, they would not repeat the manufacture of that toy again.

In yet another example of industry activism and concern, Six Party Favors, Jet Plane #8883, manufactured by Unique Industries, were noted to be dangerous because they were easily broken. Because they were so cheaply made and were made of inferior plastic, the jagged edge created by the breakage became a small part that could cut a child or be ingested. In the blister packages that the jet planes come in, the tails were broken off before the blister seal was broken.

The attorneys for Unique Industries wrote to contest our report on behalf of their client. Our attorney replied that the planes were cheaply made and easily broken. Unique Industries then sent to our toy safety experts for our opinion, some examples of a new design of their product made of stronger plastic. Clearly this Company was concerned with safety and will to do something to correct a problem.

In a horrifying memo from Paul H. Rubin, a staff economist of the CPSC on the subject of cost benefit analysis, Mr. Rubin writes about applying cost benefit analysis to human life. This is simply an economic rationale for doing nothing. Cost benefit analysis can apply to economic matters; it cannot apply to life and death, or health and safety situations. How can one put a price on a child's life or a child's limb?

In his February 25, 1986 memo to the Commissioner, Mr. Rubin talks about the problem of recliner chairs. Says Mr. Rubin: "According to information available to us, there have been eight deaths and one case of severe brain damage (which we will treat as being equivalent to a death) since 1973, associated with the entrapment of children's heads or necks in reclining chairs."

However, Mr. Rubin goes on to put some faulty cost benefit analysis to this and decides "it is our recommendation that nothing be done besides mentioning this product, along with others that lead to entrapment, in safety alerts. The deaths are injuries that have occurred are certainly tragic. However, the incidence is extremely small and it is not clear any remedial action could be cost effective."

The Furniture Manufacturers Association and the recliner chair designers have a little more humanity than Mr. Rubin and his economic staff that support this chilling proposal. The American Furniture Manufacturing Association has put out an Industry Guideline, albeit only 2 sentences, stating that recliner chairs should have a smaller opening and that a caution label be put on recliners. This is surely a minimal response, since no performance criteria were specified. But at least, it is some response!

Because of inaction on the part of the CPSC, other avenues are sought for help for consumers with their problems. Many consumer complaints come to our Committee. Most consumers don't know or care whether ADA stands for the American Dietic Association or the American Dentistry Association. They know they get action!

Our 1985 Toy Quality and Safety Report, showed that the design of the collar on the Koosa doll, the stuffed animal of the Cabbage Patch line of toys, made this a potentially dangerous toy. The potential danger of the Koosa collar was brought to our attention by Tarmara L. Pickart of San Rafael, California, whose 6 year old daughter Amy had a terrifying near miss, luckily in a dentist's office while 2 adults were nearby. Amy removed the collar of the Koosa, wedged it around her neck, and then couldn't remove it. She got panicky, her neck swelled up, and the collar got tight around her neck. It had to be removed with surgical shears by the dentist who luckily was in the room.

Ms. Pickart wrote the CPSC and our Committee about this. The CPSC sent back a form letter to Ms. Pickart, with the encouraging salutation "Dear correspondent." The letter asked her to check the facts of her complaint—certainly not a very encouraging reply.

Ms. Pickart wrote us and we proceeded to do a full investigation into the collar and to ask for its recall. Ms. Pickart sent a letter to Coleco Industries, who also realized that the collar as it was designed was dangerous. Coleco changed the design of the collar. The CPSC did nothing.

A similar situation occurred when Wallis Davies, a pediatric specialist at the Home Hospital in Lafayette, Indiana, contacted our Committee about some complaints on multi-piece pacifiers. Several complaints had come in to her that the multi-piece pacifiers were breaking and there were several near misses of babies who almost ingested the broken pieces.

Debbie Wager of our Committee then did a full study, talking to former CPSC commissioners, and other experts became an expert herself on the subject of multi-piece pacifiers. The Consumer Affairs Committee released a report on pacifiers in March 1987 in conjunction with the Children's Hospital National Medical Center, Washington, D.C. This report warned parents of the dangers of pacifiers made in more than one piece and recommended one-piece pacifiers for babies who had to use pacifiers. Furthermore, it recommended that hospitals stop giving parents makeshift pacifiers because these had caused deaths as well.

This is another example of where consumer complaints can lead to advocacy and action. In fact it is often easy to anticipate where danger will lurk before we have a death or many injuries.

Before the release of our 1986 Toy Report Survey, the CPSC was inordinately anxious for us to divulge to them the dangerous toys that we had found. On October 9 and on November 25, we received special delivery letters from the Commission. The October 9 letters said: "As consumers prepare to make their purchases of products especially for children, we want to do everything possible to identify potential hazards now. Therefore, I am requesting that you provide us with any information you may have regarding potential product hazards associated with items on the market so we may take appropriate action." The CPSC was very anxious to have our information. They wrote us again on November 25 again urgently requesting our information about dangerous toys.

For us to give our information about dangerous toys to the CPSC would be like throwing it down into a dark hole, never to be heard from or seen again. Our Press Conference is the most effective way to inform consumers about potentially hazardous toys we are able to find on the market. We could even hope to prod the CPSC into some kind of action by means of the press that we get.

Instead of worrying about us our press conference and spending their time and resources sending us special delivery letters, the CPSC should spend its energy checking store shelves, following up consumer complaints and working on mandatory standards. We are basically a volunteer group and that is what we do. We go to stores, we talk to parents, we follow up complaints, we test toys with relevant experts and children under tightly controlled conditions. Our people aren't paid. Their only motivation and energy come from the goal of protecting children from injury.

Just before our press conference we released the toys that we had found to be potentially dangerous to the CPSC.

On December 11, 1986, I wrote the Commission, "As per our conversation of December 5, I would be interested in having all the results and CPSC findings on the toys that our Committee determined potentially dangerous. We would like this information as soon as possible and will be glad to cooperate in any way we can with this."

On April 29, I wrote another letter in which I said: "we submitted these toys on December 1, 1986, and have been anxiously awaiting some notice or even sign of life. We are especially concerned about what is being done about the flammable Comfy Seat manufactured by Pansy Ellen and are also concerned about the other toys. Thank you for your prompt attention."

From January 5 until May 8, I telephoned the Commission every two weeks and asked what was happening with the potentially dangerous toys that we had brought to the Commission.

For five months I was told that "something was happening" and a letter detailing what that was would be sent to me. It surely sounded like "the check was in the mail."

On May 9, I received a letter dated May 8, probably prompted by these hearings. It gave the sketchiest kind of information about the status of the toys and some amount of excuses about why the letter could not reveal more—this from a Commission that in November had been badgering our committee for our safety data.

The letter did reveal pitiful action concerning the toys the CPSC did agree posed imminent danger and violated applicable safety requirements.

Let me illustrate the potential danger of CPSC mamby-pamby inaction. One of the children's products we found that was particularly hazardous was the Comfy Seat made by Pansy Ellen. The Comfy Seat is an "all purpose slip resistant seat for babies 6 months to 6 years" says the package—"ideal for high chair, bathtub or stroller". However, there is a warning in small print on the back of the throwaway plastic that it comes in. "Do no use Comfy Seat in cribs, carriages or playpens. This is not a toy. Sponge material is flammable. Keep away from fire and open flame." We tested the Comfy Seat by holding a lit match close to the sponge—it caught fire immediately.

The seat is a fire trap. The instructions say use in high chair or stroller—where is a high chair most likely to be?—in the kitchen. What if the high chair is made of wood? Why should any product for use by children be flammable?

The Comfy Seat should have been recalled immediately, a warning sent out and all others like it withdrawn from homes, schools, and stores. Instead, the CPSC letter informed us that "for one other product for which you expressed concern about its flammability, the firm involved has modified its product."

On May 10, 1987 additional Comfy Seats by Pansy Ellen were purchased by the Consumer Affairs Committee. The original Comfy Seat with a picture of baby and "Ideal for High Chair, Bath Tub or Stroller" with the small warning on the back "Sponge Material is flammable. Keep away from fire and open flame" was still available.

A newly designed Comfy Seat by Pansy Ellen was also available. The foam rubber is a slightly paler yellow and still goes up in flames at first strike of a match. The plastic wrapper still pictures a delighted baby sitting on the seat. The package still says "IDEAL FOR BATH TUB, HIGH CHAIR AND STROLLER" and "all purpose slip-resistant seat for tender bottoms." The new package does *not* say 6 months to 6 years of age however. There is no age labelling on the new package. This is the only discernible difference.

Monday, May 4, 1987, we purchased a Safety Bath Ring at Toys "R" Us. The durable plastic ring supposedly helps children sit more securely on a slick surface. However, it includes in it a sponge to make the seat more comfortable for babies 6 months and up. Let me show you what this sponge does. When you put a match to this sponge it too goes up in flames. So on the market is another product much resembling the Pansy Ellen Comfy Seat. The Safety Bath Ring is also manufactured by Pansy Ellen. CPSC inaction not only has allowed a fire trap seat to remain on the market but it has not identified another fire trap seat that is also on the market, made by the same manufacturer.

Let us see what other kinds of things we were able to purchase during the week of May 4, 1987 at toy stores in the Metropolitan-Washington, D.C. area. How effective is Consumer Product Safety Commission monitoring? Here are small blocks purchased at a local toy store manufactured by Juri. There are no age warnings on them and they do not pass the CPSC's own small parts test. They are so tiny and extremely dangerous if ingested.

Here's another toy, a bowling toy made by Borbo Productions. Borbo Bowling Toy is a darling painted set of soliders and balls in an egg—all of them too small to pass the small parts test. They, too, are on market right in Washington, D.C. with no warning on the label.

Here are some crayons made in England by Reeves—10 triangular crayons that say nothing about being non-toxic. They were also purchased at a Washington, D.C. toy store.

Here are barnyard animals packaged in a box that looks like matches. This is a bad concept—to have a child play with something in a box that looks like a matchbox. Furthermore, all are smaller than the small parts test and can easily be ingested.

What should be done? The problem is not to find the area in which things should be done but to choose among the worst of many.

Let us take one area, that of baby walkers. Dr. James L. Downey, a prominent Chicago pediatrician, said "if God meant little kids to roll around he would have put little wheels on their feet. Not a year goes by that we don't see a broken leg or fractured skull on kids that were in these walkers. They result in injury hospitalization and a terrible experience for the parents and child."

In one case, Dr. Downey says, the baby spent 3 weeks in the hospital with a skull fracture and he may have suffered permanent neurological damage.

Baby walkers are a disaster. Our 1985 toy survey warned that baby walkers are involved in an enormous amount of injuries. In 1984, the CPSC's own figures showed 15,623 reported injuries to babies from baby walkers.

In 1984 the Canadian Pediatric Society issued a warning that 40% of children in baby walkers are involved in some type of mishap ranging from finger entrapment to tip overs to falls down stairs producing head injuries. This is just the tip of the iceberg.

In a three year study of childhood injuries regarding baby walkers in the state of Massachusetts, 54 children who fell down stairs on babywalkers either went to the hospital emergency rooms or were hospitalized.

Parents believe baby walkers aid a child's development. This is a misconception. Dr. Downey says what is often overlooked is that a walker can disrupt a child's development. "In the first year the baby learns to roll over, sit up, pull himself up, stand alone, and finally to walk. This is a process that is ongoing that takes anywhere from 3 to 7 months and is the result of combined physical, emotional and intellectual development. If you interfere with this, specifically as the walker interferes with the physical milestones, then it makes logical sense that you may be interferring with the emotional and intellectual aspects too."

Another article by two prominent pediatricians backs this supposition. Not only are walkers dangerous but in fact they slow down the baby's development. Pediatricians Joseph Greensher, M.D. and Howard Moffenson, M.D. in an article entitled "Injuries At Play", published in February 1985 say: "Regarding the influence of walkers on early ambulation, a study of twins found that infants not using walkers were walking slightly earlier than their siblings using walkers." They went on to enumerate some of the potential hazards having to do with baby walkers and go on to say: "Walker-related injuries result in high 'minor' trauma and, more worrisome, a high prevalence of significant injury." * * * "The potential for injury is a generic problem, although some brands differ considerably in their stability."

What is the Commission doing about this pressing problem? The CPSC has been working on a voluntary standard with the ASTM and the Juvenile Products Manufacturers Association for "several years." There is an old mandatory standard that basically says that baby walkers should not pinch or amputate little fingers.

If and when a voluntary standard is ever adopted, the CPSC and JPMA want to abolish the mandatory standard.

Thus we have a backward step advocated by the CPSC. Further discouragement is that the voluntary standard has been worked on "for several years" and the Commission still "doesn't know when" it will be adopted.

Finally, a voluntary performance standard is totally inadequate for a product that is "generically" dangerous. Ideally, such a product should be banned. At the very least a mandatory performance standard to prevent tipping dangers should be enacted. That would be the stance of an activist CPSC.

A third area that has become a total scandal has been the area of toy labelling. Toys labelled "for 3 years and older" invite a situation that is invidious and hazardous. There are many cheap, unimaginative and poorly constructed toys with hazardous small parts that are obviously intended for the very young child. However, by carrying the "3 and under" label, manufacturers circumvent the law and protect themselves.

Here are two examples that simply illustrate the problem. Fashion Doll Accessories, manufactured by Toy Time, Inc. are flimsy, cheap, plastic accessories for Barbie, Miss Sergio Valente and Brooke Shields Dolls. "Over 100 pieces" for $1.97 proclaims the package. These accessories are tiny and junky, but little kids would love them for their dolls—and love to mouth these pieces as well. The manufacturer protects themselves by a "for ages 3 and up" label.

My Little Pony, Baby Pony With First Tooth, manufactured by Hasbro, is an accessory set that includes Baby North Star. It is geared for the very young child, but is labelled "Ages: 3 and up". It is so labelled because it contains small parts, even though it appeals to younger than 3 year olds.

The CPSC should immediately take a position that toys directed toward the very young cannot avert liability by labelling "for 3 years and over". The "over three" label has become a smokescreen behind which the manufacturers shamefully hide. And the CPSC knows it.

What a travesty! What a calamity! Our nation's children go unprotected by a useless and inept Consumer Product Safety Commission.

Senator GORE. Thank you very much. We will hold questions.

I am going to change the order just a little bit. Dr. Morris, I would like you to go next, if you would.

Dr. Morris, welcome. If you would proceed.

Dr. MORRIS. Thank you, Mr. Chairman. First of all, thank you for inviting me here today to share my thoughts with you about ATV vehicles.

As you know, my practice is solely limited to the trauma patient, the patient who has undergone severe injury. The facts about ATVs are clear. The ATVs are a hazard. This is well documented in the medical literature, well documented in the CPSC's ATV task force report, and the facts are that over 700 people have died in the last four and a half years. A disproportionate number of these people are children.

In our series in Nashville, 40 children have been seriously injured in the last two and a half years, 50 percent of those children are under the age of 12, 25 percent are under the age of eight; seriously enough injured to be in a major trauma center.

The facts are that despite the deaths, the large number of deaths, what is overlooked is an equal, if not larger, number of permanent disabilities. Permanent disability is a nice word for vegetable. Permanent disability is a 13 year old with 140 days in the hospital, $350,000 worth of hospital bills, who went home on a breathing machine. The only way that he is able to communicate with his mother is by blinking his eyes.

Permanent disability is an 11 year old with 70 days in the hospital and $140,000 worth of hospital bills, and all he can do is track with his eyes.

The facts are indisputable, Mr. Chairman. The progress has been negligible. We need a clear, concise, pointed message from the Federal level to be disseminated not only to the people but to the State legislatures, and that message needs to read that all-terrain vehicles are imminent hazards in the hands of children.

Thank you.

[The statement and questions and answers follow:]

STATEMENT OF JOHN A. MORRIS, JR., M.D., VANDERBILT UNIVERSITY MEDICAL CENTER

Mr. Chairman, thank you very much for this opportunity to appear before the subcommittee to present our concerns about all-terrain vehicles. From my perspective as the Director of the Division of Trauma and a practicing trauma surgeon at Vanderbilt Medical Center, I see first-hand the deaths and injuries attributed to all-terrain vehicle use, especially among children. I am encouraged that your subcommittee has given priority to ATV safety.

There are three points I would like to make before the subcommittee today: (1) the medical community has recognized for some time the seriousness of the injuries resulting from ATV accidents and has published numerous articles describing its concerns; (2) the data at Vanderbilt suggests that for every death there is almost

one disabling injury, the impact of which has not been widely discussed; and (3) despite extensive media coverage of the dangers of these vehicles and an extensive review of ATVs by the Consumer Product Safety Commission, to my knowledge, there has been no federal response to this problem.

For the record, ATVs are motorized three-and four-wheel cycles with balloon-like, soft tires intended for off-road use. They are designed to be ridden by a single person with a seat to be straddled by the operator and handlebars for steering control and braking. ATVs typically have gasoline-powered engines of between 50 and 500 cubic centimeters displacement. The largest vehicle is capable of speeds between 90 and 100 miles per hour. They are designed for use in sand, open fields, mud and other terrains. They are used primarily for recreation although there are competitive events staged in some parts of the country.

All-terrain vehicles were introduced in this country in 1971. They have enjoyed enormous popularity, especially in rural states such as Tennessee. The Consumer Product Safety Commission estimates that at the end of 1986 there were approximately 2.3 to 2.4 million ATVs in use in this country. Although they have been advertised as a form of fun, exciting, safe recreation for all ages, it is clear from the data that they are far from safe, especially for young riders.

Reports of trauma associated with ATVs first appeared in the medical literature as early as 1983. Physicians, especially those practicing in rural states, began to note an increasing number of injuries associated with ATV use. In 1983 McDonald and Stribling reported that 45 patients were seen in a four month period in Jackson, Mississippi hospitals. Seven of these patients were admitted with major fractures. There were no fatalities in this series. During a 12 month period in 1984, 17 patients were hospitalized in LaCrosse, Wisconsin for the treatment of injuries sustained in three-wheeler accidents. Again, long bone fractures were the most common injury, with no deaths occurring in these patients.

However, as the popularity of these vehicles grew, the literature began to report not only an increase in severity of injuries but also deaths, especially in the pediataic population. Haynes, Stroud, and Thompson (1985) reported that in 1984 sixty children were seen at the East Alabama Medical Center as a result of three-wheeler accidents. Ten of these children required admission to the hospital with severe injuries including a ruptured liver, fractured sternum, head trauma, and long bone fractures. Ten children with serious injuries following ATV accidents were admitted to the Arkansas Children's Hospital over a 12 month period; two additional children died before reaching a hospital (Golladay et al., 1985). During an eleven month period, five victims between 7 and 18 years of age were admitted to the Spinal Cord Injury Care System at the University of Alabama. Of these five cases, three resulted in quadriplegia an two in paraglegia.

A study published last November in *pediatrics* highlights for the first time severe head injuries among children and the long-term sequelae associated with these injuries. A study of 93 consecutive cases admitted between July 1979 and July 1985 to the Gillette Children's Hospital Pediatric Head Injury Service and to the St. Paul Ramsey Medical Center were reviewed. Of these, six received disabling injuries and one died. The following table describes the seven cases:

Case No.	Age (yr)	Experienced Driver	3- or 4-Wheel Vehicle	Length of Coma	Outcome and complications	Length of Hospitalization
1	14	Passenger	3	8 mo	Nonverebal, nonambulatory 4 + yr.	
2	9	?	3	Until death	Death	1 d.
3	14	Yes	3	3 d	Meningitis	51 d.
4	15	Yes	3	1 d	Meningitis, hearing and vision deficits.	63 d.
5	16	Yes	3	2 d	Learning disabled	22 d.
6	12	No	4	12 + mo	Vegetative state	12 + mo.
7	16	Yes	3	10 d	Learning disabled	53 d.

The data from St. Paul parallel the experience at Vanderbilt with respect to the serious nature of the injuries. Between September 1984 and 1987, 39 pediatric patients, all under the age of 18, were admitted to the Vanderbilt Trauma Center as a result of all-terrain vehicle accidents. Seven children died. Their ages were 6, 8, 10, 12, 13, and two 14 year olds. Another six of these childern are permanently disabled

as a result of their injuries. This data represents an almost equal number of disabling injuries to deaths, the impact of which has not been widely discussed.

The human cost and the cost to society of these types of injuries cannot be underestimated. To begin with the average cost of the *initial* hospitalization for the these six children was $118.452.18. This does not include physician services. Of far greater significance is the include physician services. Of far greater significance is the long-term cost of caring for these children. Assuming that each lives to age 65, the lifetime cost per child is estimated to be $2,995,200, or a commulative cost of $17,971,200.

This estimate casts a new light on the data published by the Consumer Product Safety Commission. As of November 1986 the Commission had reports of 644 ATV-related deaths which occurred between 1982 and 1986. If the Vanderbilt ratio of deaths to disabilities is applied to the CPSC data, the resulting cost to society of injuries already in the system is in excess of 1.5 billion dollars. Despite an overwhelming preponderance of evidence that ATVs are not safe for children, extensive media focus on this problem and a 12,000 page report from the ATV Task Force of the Consumer Product Safety Commission, there has been no definitive federal action in this area. Very few states have enacted legislation to protect children from serious or fatal injuries associated with the use of ATvs. I can tell you that one person will die every other day between the months of March and September from an injury resulting from these vehicles until effective action is taken.

QUESTIONS OF SENATOR GORE AND THE ANSWERS

Question 1. Are ATV injuries suffered by children the result of any particular aspect of the vehicle?

Answer. We have seen considerably more injuries as the result of three wheel vehicles as opposed to four wheel vehicles. There is considerable information in the engineering literature to suggest that the four wheel vehicle is more stable than its three wheel counterpart. However, I contend that children do not have the strength, maturity, or judgement to drive either type of vehicle.

Question 2. How do ATV injuries compare with other consumer product injuries in terms of frequency and severity?

Answer. In our experience, the number and severity of ATV injuries dramatically outweigh any other group of injuries in children with the exception of motor vehicle accidents. This data reflects injuries that are severe enough ot warrant admission to the hospital and not reflect the less severe group of injuries which can be treated on an outpatient basis.

Senator GORE. That was a very strong statement.

Mr. ALAN ISLEY. Have I pronounced your name correctly?

Mr. ISLEY. That is correct.

Senator GORE. President of the Specialty Vehicle Institute of America.

Please proceed.

Mr. ISLEY. Mr. Chairman, Members of the Subcommittee, good morning. I am Alan Isley, President of the Specialty Vehicle Institute of America—a non-profit national safety organization founded by the four major U.S. distributors of all-terrain vehicles. In my remarks today, I will be addressing the ATV industry's efforts to work with the Consumer Product Safety Commission on matters related to ATV safety.

The Institute was founded by the four major U.S. distributors of all-terrain vehicles in 1983, a full year before the CPSC became involved with all-terrain vehicles. We have been actively pursuing the voluntary standards process in cooperation with the CPSC as well as our own expedited standards.

To expedite this process at the beginning, we separated the standards into those that could be achieved on an expedited basis and those that were going to require additional research. We are

proceeding on those two phases, phase one and phase two, concurrently in order to speed up the process.

The ATV industry has been actively pursuing the voluntary standards process in cooperation with the CPSC. Our efforts began in April 1985 with a joint meeting involving the SVIA and the CPSC staff. The particular voluntary standards process preferred by the CPSC is a time-consuming one, and I should explain. As you heard earlier here, this is a nationally recognized consensus standard. While it has not moved as quickly as we originally hoped largely due to the complexities of the process itself which requires consensus of over 40 nonmanufacturers, we have almost completed phase one at this time on controls, equipment and labeling, and we are continuing to work on phase two, performance standards.

We felt that while working diligently under the longer process it was important for the industry not to stand by passively. Instead, the industry quickly and unilaterally adopted some of the initial draft standards, including consumer labeling, age labeling, standardization of controls and standardization of user information.

The draft phase two performance standard was circulated for the first consensus draft last November. Only after that draft was circulated did the Commission formally authorize its staff to participate fully in the standards development process. With these developments and the progress made at the last voluntary standards meeting on April 21, we are hopeful that phase two standards can be agreed upon expeditiously.

Now, although the Commission made voluntary standards its initial priority, we informed it that, in our view, a wide variety of education and information programs along with comprehensive State ATV laws would have a greater impact on reducing injuries.

Our safety programs include a nationwide public awareness and advertising campaign; a toll free 800 safety hotline; information about safety in every owners manual and in all SVIA and individual company publications; safety-oriented hang tags on all ATVs; safety videotapes in every dealership; and more than 1,000 all-terrain vehicle instructors qualified to teach a one-day hands-on course or present either 50-minute or two-hour safety seminars through community organizations.

Unfortunately, we have not had the enrollment in our four-and-one-half to six-hour hands-on training courses that we expected due to the lack of rider interest. Therefore, in addition to continuing our efforts for hands-on training, we have stepped up our other education programs in hopes of reaching as many riders and potential riders as possible.

We also firmly believe that State safety certification legislation is the most promising long-term solution. Our industry has drafted model ATV legislation for State use and is actively pressing for its enactment. Our model legislation requires State certification for ATV riders and supervision of children. It requires helmets and prohibits riding on roads, carrying passengers or using alcohol while riding. Eleven states have passed ATV legislation, and bills have been introduced this year in 20 additional states.

We believe that quality safety programs combined with State regulation can reduce injuries significantly. Since the industry began its safety programs, the ATV use adjusted accident rate has

declined by 11 percent in 1985 and an additional 13 percent in 1986.

The industry is committed to continuing its safety programs to reduce the level of ATV-related injuries even further. These programs are specifically aimed at rider practices that cause a majority of ATV-related accidents. These unsafe practices include: riding recklessly; carrying passengers on machines that are only intended for one person; riding under the influence of alcohol; riding on paved surfaces; riding without helmets; and, most importantly, allowing children to ride adult-sized ATVs that are specifically labeled not for their use.

We believe that ATVs are safe products when they are ridden appropriately. We will continue our efforts to assure that riders are properly instructed and supervised and function as knowledgeable, responsible and safe participants in ATV riding. Our programs are proving successful, and we plan to continue and accelerate our campaign to reduce further the rate of injuries associated with ATVs.

We are also willing to reinforce our commitment to work with the CPSC to achieve the common goal of reducing ATV injuries through responsible actions and effective programs.

Thank you.

Senator GORE. Mr. Thomson

Mr. THOMSON. Mr. Chairman, I appreciate the opportunity to come down here, and I will consolidate my remarks and leave written comment for the record.

There are three things I think I would like to address that have come up in your hearings here. One is the question of organization, the question of a single administrative versus a collegial body. The Toy Manufacturers of America support very strongly a collegial body, and we do that for a couple of reasons.

Number one, we are frankly quite frightened of the idea of a single administrator based on some of the people who we have seen run the CPSC up to this point, and we have been watching it for 10 years.

Senator GORE. I am, too, but for different reasons.

Mr. THOMSON. I understand from your first remarks. I see that.

Senator GORE. Well, if Mr. Scanlon was appointed the single administrator you might like that, but I would not.

Mr. THOMSON. I am not saying I would like it, but I can tell you I would not have liked Mr. Statler. I think he had a heck of a nerve coming up here and talking the way he did based on his performance for seven years. He was never on the right page for seven years.

Senator GORE. Well, he does not have an opportunity to respond to an ad hominem.

Mr. THOMSON. The point, I think, is that a single administrator who is not properly trained, not properly trained in delegation of authority and the running of an agency I think would be a problem. I think at least having three gives a balance wheel, and I believe that is important to industry.

Included in that comment, too, Senator, is the issue of selection. I do not think that Congress can expect the CPSC to run the way you expect it to when we persist in putting people who have been

heads of inauguration committees, lawyers who have never had any business expenience or anybody who has not had some commercial understanding of world manufacturing processes and the complexities of consumer products

You heard Mr. Pittle. Mr. Pittle was the one person in the nine or 10 years I have watched this agency who had a basic understanding of the processes. I think I recommend very strongly to Congress that you look at the selection process and only confirm those people who are capable of understanding the processes of manufacture of the commercial world so that they can handle these issues properly.

The second issue I would like to address is one of voluntary standards. We have heard a lot of adverse discussion here. The toy industry is probably the most regulated of all the children's products in this country. We support very strongly voluntary standards. We have a very elaborate voluntary standard which goes far past the mandatory standards, and I believe we have been responsive to the CPSC in their requests.

We have, in recent years, put voluntary standards in on toy chests, nitrosamines, pacifiers, DEHP and a number of other things. Anytime that they brought the facts to us and we have been able to look at the facts, we have addressed ourselves to it.

My mandate from the 250 members who represent 90 percent of all the toys and games put into the market place is to do everything possible to produce safe toys. It is bad business to have unsafe toys. It is not only a moral obligation as parents and grandparents, but secondly, the financial incentive to produce safe toys is very strong. We have to develop in the minds of our consumers the idea that our brand names are good toys, good play value, good financial value and are very safe for the children. We want to put products in the hands of the children that the consumer can be quite sure are going to be alright if used properly.

So voluntary standards can and do work. I am inclined to think I am the only person you have heard today who has ever put one in. I can put a voluntary standard in and have put it into our industry, within a month and a half or two months and received complete cooperation from every single member.

The last issue that I think I would like to address is the performance of the CPSC, which has been widely criticized. I am frankly not interested in whether the commissioners argue among themselves. That is not the heart of the Commission. The Commission is the talented, capable people at the staff level. We see no diminution of their activities or their willingness to step up the problems. Commissioner Scanlon mentioned 53 recalls in the toy industry. That would suggest to me that they did their job in 1986.

Much has been said about the fact that we have had press conferences and we have worked with them. I see nothing wrong with that. I have been in business for 37 years in the manufacture of plastic and rubber products at every level, and I see nothing wrong with working with our government agencies to produce a better product. It is good business. Everyone should do it. If you do not do it, you are a damn fool. I find that the CPSC staff has been most helpful to us.

We have also run a number of training sessions. We have another one coming up to address some of the issues that Ms. Brown brought up in which retailers are going to out to the Far East and buying items directly from contract manufacture's. They bring them into the marketplace, going around the TMA manufacturers. We are running a joint safety seminar with the CPSC on May 28, and I see nothing wrong with them coming up and assisting us and assisting those manufacturers and retailers who do not understand the standards to perform better.

I thank you very much for your attention.

[The statement and questions and answers follow:]

STATEMENT OF DOUGLAS THOMSON, PRESIDENT, TOY MANUFACTURERS OF AMERICA

My name is Douglas Thomson. I am the President of the Toy Manufacturers of America, (TMA) the trade association representing 250 toy and game manufacturers, designers, and importers who distribute about 90% of all toys and games sold at retail in the United States. I am also the President of the International Committee of Toy Industries, (ICTI) a coalition of toy and game associations from all of the major marketing and manufacturing countries of the world. We appreciate the opportunity to comment on the issues and performance of the CPSC.

Let me preface my specific remarks with an overview of the nature of our toy safety standards. The toy industry is perhaps the most regulated of all children's products. In addition to the mandatory standards on small parts, sharp points, sharp edges and lead-in-paint, electrical-thermal, rattles, pacifiers, toxic and highly toxic substances, flammable and highly flammable substances, irritants and sensitizers, we have elaborate voluntary standards which go far beyond the legal regulations. Our voluntary standards are reviewed regularly and in 1986, an update was completed through the American Society for Testing and Materials—a process which brings into play manufacturers, retailers, consumers and regulators to consider and strengthen the standards based upon all available information and experience. Too, our International Committee has agreed upon a harmonized version in order to communicate to the manufacturers, testing laboratories, buyers and distributors world-wide. Recent voluntary standards improvements have embodied toy chest, nitrosamines in rubber pacifiers, plasticizers in vinyl teethers and pacifiers, increasing the sizes of certain rattles, teethers, and squeeze toys and more consistent age labels. *Safe toys are a moral obligation and a financial requirement of continuity of business.*

While we have our critics, the facts indicate that with over two billion toys sold in the United States each year, multiplied by the enormous number of play hours, toys are among the safest products introduced into the household. Analysis of data indicates that the vast majority of accidents associated with toys are not serious and are caused by falls, children being hit by toys, and the general enthusiam and lack of experience by children. According to reports there are anywhere from six to ten other common household items which cause more injuries—for instance home furniture, personal use items, household appliances, packing and containers.

The first issue I wish to address is the question of the organziation of the Commission with a single administrator in charge or managed by three or more Commissioners. Based upon our substantial experience with the Commission, it is our considered opinion that three commissioners is a more effective organization than either five commissioners or a single administrator. Our reasons are as follows:

The vast array of consumer products makes it difficult for the Commissioners to be even generally knowledgeable for some of the commercial and technical aspects. Three Commissioners gives the agency more opportunity to understand the various products, especially if the appointments were made with more attention to general background helpful to understanding the complicated constructions and uses of products.

With a single administrator, there is a risk that that individual might not have the drive or knowledge to properly insist upon needed compliance or, at the other extreme, might be too narrow to effectively assess the need or implication of potential regulation. With a single administrator, there is the risk of either a particular political leaning or excessive zeal in either direction.

Five Commissioners appear to be an unneeded expense and cumbersome. Three gives better balance and insures a majority vote to go forward, assuming that three constitutes a quorum.

The second point to be discussed is the enforcement activity of the Commission. Much has been said by the critics about the reduction in the CPSC budget and the resultant effect on its activities. We do not support that view and believe that those who are not close to the agency have little knowledge of the day-to-day activities and use budget constraints to make their cases. This industry supports the need for firm action to meet Gramm-Rudman goals and the most necessary reduction in the Federal deficit. We have seen no diminution in the compliance activity on toy products based upon the number of recalls or the requests for action by Commission staff. This latter point, requests for action by the Commission, to us, is by far the most important of all activities. The Commission, has in the past couple of years, emphasized the need for voluntary action, and I believe the toy industry has been responsive on all those items on which the facts would indicate required action—toy chests, rattles, teethers and nitrosamines to name a few. And I reiterate that toy safety and consumer confidence is paramount to do business. Too, voluntary standards are the most expeditious way to move with technical knowledge, fast communications and professional follow-up, while still giving the agency the ability to require compliance on all imprtant points.

A third point is one which the CPSC has picked up for emphasis. Analysis of recalls in recent years has indicated that may products directly imported by either retailers or small importers outside of the scope of the TMA have been the biggest offenders. While these represent a relatively small volume they are worrisome. The CPSC has increased import surveillance and the TMA is offering a special safety seminar this month to these retailers and importers to train them deeper in the requirements of both the mandatory and voluntary standards.

We have also been pleased to find the Commissioners and staff cooperative in bringing forth detail, visiting our toy fair and participating in our regular safety seminars to communicate experience and techniques to the industry. That is not to say that we have not had arguments over different points of view about suggested changes or compliance action. We have had these both as individual companies and as a trade association, but I tend to see these as part of the give and take of the democratic system and see no serious problems.

There is one area in which we have consistently commented and sought better understanding. The CPSC is regularly called upon to release figures to the press on accidents and fatalities associated with toys. With a nation of over 250 million people spread so widely geographically, these numbers are very difficult to come by (unlike, say, automobile accidents which go through official police channels). Thus the public receives an extrapolated figure of accidents associated with, no caused by toys. Under this system, when a child falls on a toy, it is a "toy accident." When a child rides a tricycle down the cellar stairs, into a swimming pool or into the path of an automible, that is a "toy fatality." We even find on the list young and older adults electrocuted while trying to remove kites or planes from high tension lines. While we do not disagree that consumers need better education on these points, both the press and the self-styled toy experts never analyze the numbers and generalize, leaving consumers with the impression that toy products are unsafe and require more regulation. For example, the 1985 toy fatality list from the CPSC announced that there were 22 reported fatalities; 16 of these are known to have been caused by situations other than toy design or were by exempt products.

So we have regularly called for the CPSC to be more careful in announcing accident and fatality figures, since once out, the press repeats the figures, usually without explanation, leaving an erroneous impression with the public and regulatory authorities. Let me be very clear; we do not beg the issue in any way that we are totally responsible for the manufacture of safe toys and the communication to our consumers on how to select, use and maintain these products. We simply want to be sure that the CPSC's communication to the public properly reflects the true picture. They have been responsive to our suggestions since you will note in recent years that the CPSC message has urged proper toy selection and supervision of children as the best way to contribute to toy safety.

To conclude my remarks, let me pose what I believe to be the best indication of the safety of toys and the effectiveness of the CPSC in regulating. I ask each member of the Subcommittee to answeer the question "Tell me about the serious accident you, a brother or sister or any of your children ever had resulting from the design of a toy."

QUESTIONS OF SENATOR GORE AND THE ANSWERS

Question. CPSC inaction is alleged to have sent a signal that industry can relax its voluntary safety efforts. Would you agree with that assessment?

Answer. No. The CPSC has continuously encouraged industry to develop or revise voluntary standards. Representatives of the Commission have in recent years participated in the development or the revision of the industry's safety standards for toys, ASTM F963, a new safety standard for toy chests, and a standard fixing maximum levels for DEHP and nitrosamines in certain children's products. Chairman Scanlon has reorganized the Commission to provide greater emphasis on the use of voluntary standards, upgrading the efforts through the creation of the post of Voluntary Standardards Coordintor in the Office of the Executive Director. The staff of the Commission continues to encourage the toy industry to develop or improve its voluntary standards when risks of injury associated with its prouducts have been identified.

Question. Should Section 7 of the Consumer Product Safety Act be amended to allow interested persons the right to request immediate agency review, with subsequent judicial review, of CPSC reliance on voluntary standards? Would the same response apply to a similar proposal to amended the Federal Hazardous Substances Act?

Answer. The answer to both questions is "No." Section 7 allows the Commission to rely upon a voluntary consumer product safety standard rather than promulgate a mandatory consumer product safety rule whenever (a) compliance with such voluntary standards would eliminate or adequately reduce the risk of the injury addressed and (b) it is likely that there will be substantial compliance with the voluntary standards. Whether these requirements have been met is essentially a determination of fact which the Commission has made in several instances. One good example is the voluntary standard developed by this industry for toy chests after the staff had identified certain risks of injury associated with toy chests and proposed a method of risk reduction.

The adoption by the Toy Manufacturers of America of an adequate voluntary standard for toy chests, and subsequent Commission determination of compliance, indicated that in excess of 95% of the toy chest industry was in compliance with the new standard. Judicial review of factual issues of whether a risk is adequately addressed by a standard or the extent of compliance with the standard would only serve to present issues of fact to a court of appeals. These issues are traditionally resolved by the agency acting in its capacity as trier of facts and should not be reviewed de novo by an appellant court.

Question. Should Section 9 of the Consumer Product Safety Act be amended to allow the CPSC to defer to an existing voluntary standard only in situations where a standard actually exists?

Answer. No. In the case of the voluntary standard for toy chests referred to above, the toy industry, although it represented only two of the dozen or so manufacturers of toy chests, was able to develop a safety standard with the participation of all of the manufacturers, after the staff of the Commission had identified the need for a voluntary standard for toy chests. No prior toy chest standard existed. The standard was developed in a short time, and substantial compliance by the entire industry was demonstrated in a period of less than 12 months after the Commission and the staff had called for such development. Industry should be given an opportunity to develop an adequate voluntary standard and to demonstrate substantial compliance with it even if such a standard does not exist at the time the Commission identifies a risk of injury and the need for a standard. The Commission has always taken approximately four years to develop a mandatory standard or rule. Nothing is lost and everything is gained by permitting industry to develop a voluntary standard and demonstrate compliance therewith in a shorter period of time.

Question. Should Section 7 of the Consumer Product Safety Act be amended to require than any voluntary standard deferred to by the CPSC be developed through consensus procedures to assure that interested parties are afforded an opportunity to participate in the development of such standards?

Answer. No. Often consensus procedures drastically prolong the period of time during which a standard can be developed. A recent experience of the toy industry indicates that the industry was able to adopt voluntary standard setting maximum levels for nitrosamines in latex nipples within a matter of two or three months after a potential risk of illness had been identified. Similarly, the industry was able to do the same with a voluntary standard regulating the use of DEHP in rattles, teethers and pacifiers after the final report of the Commission-appointed Chronic Hazards Advisory Panel enables the Commission to conclude that no formal regulatory

action was required to regulate DEHP. These actions, if undertaken through consensus procedures, could have taken years to implement. As a matter of fact, after the voluntary standard for nitrosamines was adopted, it was submitted to ASTM for consensus review. This review continued long after the standard was developed and implemented and has not yet resulted in the adoption of a consensus standard.

Question. Should Section 9 of the Consumer Product Safety Act be amended to require that a time limit be imposed between the time an advanced notice of proposed rulemaking is published and the proposed rule?

Answer. No. Experience has shown that the Commission, when confronted with any mandatory time period, has always extended the period of time. Thus, although the original Consumer Product Safety Act called for the development and implementation of mandatory safety standard rules within 120 days, the statutory provision allowing the Commission to extend such period for good cause shown was always exercised. As a result, notwithstanding the mandatory time limit originally prescribed for the development of consumer product safety standards or rules, the Commission repeatedly extended the period and all CPSC standards took about four years to promulgate.

Senator GORE. Thank you very much. I appreciate your appearance here today.

Mr. Isley, what are the companies that make up your association?

Mr. ISLEY. Our member companies are Honda, Yamaha, Suzuki, and Kawasaki.

Senator GORE. Honda, Yamaha, Suzuki, and Kawasaki.

Mr. ISLEY. Right. These are the United States distributors for those companies.

Senator GORE. And what is the maximum speed of one of these ATVs?

Mr. ISLEY. They come in several different classes. The smallest all-terrain vehicle, the one that is recommended for children from 6 to 12 years old, comes from the factory preset with a speed limitor at 8 miles per hour.

Now, at a later time, the child's parent, with tools, can increase that to as much as 12½ miles per hour.

The larger ATVs, depending on whether they are for utility use, for general recreation purposes, or for racing competitive use, can have speeds ranging anywhere from the 20 to 30 mile an hour range for general purpose, to over 50 miles an hour for a competitive racing machine.

Senator GORE. Well, the ones I have seen must have been the competitive racing machines. They all seem to go pretty fast.

Mr. ISLEY. The use of the vehicle, of course, has to be controlled by the operator, depending on the environment they're on.

Senator GORE. So a child who decided to go too fast would be behaving irresponsibly, and thus, if an accident occurred due to that child going too fast, it would be the fault of the child, in your view; is that right?

Mr. ISLEY. It is hard to say what is too fast. We believe that the child should have supervision, and we would rely upon state law as well as all the consumer education and information that we put on the vehicle itself, and in the owner's manuals.

Senator GORE. Do you think a law is needed?

Mr. ISLEY. Yes, we do propose state law controlled use of all-terrain vehicles.

Senator GORE. Is it easier to write those state laws?

Mr. ISLEY. Is it easier?

Senator GORE. Is it easier to deal with the state laws?

Mr. ISLEY. The states were selected because they have the traditional responsibililty for performing licensing functions for automobiles and enforcement functions.

Senator GORE. Let me come back to the question. Let's say you have an 8-year-old child, who has been sold a machine that is capable of going 50 miles per hour.

Would it be your view that that child should ride at much slower speeds?

Mr. ISLEY. It is our view that that child should have never been allowed to purchase or sold that machine.

Senator GORE. They commonly are, aren't they?

Mr. ISLEY. No, we have all machines labelled, all adult sized machines that could achieve anywhere near that speed clearly labelled on the machine, in the owner's manual, and on all of the safety literature that is available at the dealership, "not for use by children under 14 years old."

Senator GORE. There seem to be examples of your dealers telling customers that it is okay for young kids to ride these. And there seem also to be advertisements. I have seen them myself, and they seem targeted at young kids.

Mr. ISLEY. Senator, our industry does not condone irresponsible sales procedure, and we will act immediately to contact anybody who is found misrepresenting the intention of the manufacturers.

The advertising was the concept——

Senator GORE. How many times has that been done?

Mr. ISLEY. I personally have done it four or five times in the last two months.

As my name becomes more well known, and people like yourself will bring these things to my attention.

But the manufacturers as a regular course of business will——

Senator GORE. Four or five times since the "60 Minutes" show. Any before then?

Mr. ISLEY. Well, my personal involvement began with the exposure on that show. Now the manufacturers have regular field sales personnel that call on dealers regularly.

And one of their responsibilities—as a matter of fact, this is the subject of a service bulletin that goes to dealers—and one of the things that a dealer has to be convinced of is the responsibility for fulfilling their sales responsibility.

Senator GORE. Who else has responsibility besides you for monitoring the dealers' compliance with the manufacturer's suggested standards?

Mr. ISLEY. The distributors for those products.

Senator GORE. The distributors are supposed to enforce that?

Mr. ISLEY. Yes.

Senator GORE. How many people do they have assigned to enforce those standards?

Mr. ISLEY. To give you an accurate answer——

Senator GORE. Any? Any?

Mr. ISLEY. Oh, yes, certainly. They all have extensive field forces. Some of them are specifically trained, and their job description is a safety department.

Senator GORE. How many dealers have had their dealerships revoked, or their franchises revoked?

Mr. ISLEY. That was asked of me before, and I cannot say that.

Senator GORE. None?

Mr. ISLEY. No, there have been cases.

Senator GORE. How many, roughly?

Mr. ISLEY. I don't know roughly.

Senator GORE. One?

Mr. ISLEY. I would have to supply[1] that from the records of our member companies.

Senator GORE. Well, you were on national television, in a very embarrassing position, and asked that question.

It would seem to me that you might, since that experience, and coming before the House, coming before the Senate, it would seem to me not an unreasonable thing to expect that you would have an answer to that question.

Mr. ISLEY. Well, Senator, I have been informed that because of the franchise laws that exist at the State level, that this is a matter that is subject to litigation; and the companies have not been willing to share that information with me.

Senator GORE. Well, that's unfortunate, is it not? Because you are there spokesman here before Congress, and you are trying to make their case, and they will not give you the information that you feel you need in an effort to try to persuade us that they are doing anything.

Mr. ISLEY. Senator——

Senator GORE. And the question is, are they doing anything by way of strong action to enforce these standards. And you say, you cannot give us that information because the companies will not give it to you.

That is a pretty weak case that the industry makes, it seems to me.

Mr. ISLEY. Senator, you are mischaracterizing what I said. I can give you all the information about enforcement and safety preparedness for the dealers, except that which has been a matter of litigation.

Senator GORE. Which happens to be the only thing with any teeth in it. How do you enforce it? If you are not willing—if the manufacturers or the distributors are not willing—to enforce it with dealers, it has no meaning.

You understand, they have an economic incentive to sell as many as they can, right?

Mr. ISLEY. They have an economic incentive to sell as many in an environment that does not produce injury.

Senator GORE. There have been 7,000 injuries.

Mr. ISLEY. Yes, sir. That is a monthly figure that I think you are quoting from this morning.

Senator GORE. That is correct. There have been 30,000 since 1982?

Mr. ISLEY. There have been more than that.

Senator GORE. Excuse me, 300,000 since 1982, and 700 deaths.

And you still cannot cite a single instance of a dealer being the object of any enforcement action by the manufacturer for violating these standards?

Mr. ISLEY. Senator, the occasion of a salesman purposely misrepesenting the product has not been significant enough to set up a formal enforcement procedure.

Senator GORE. The occasion of children being killed has been quite frequent.

Mr. ISLEY. Yes, and we are addressing that through many, many programs.

Senator GORE. Twenty people per month, half of them children. And a lot more than that suffering from total paralysis, loss of function, permanent disability.

I am sure that bothers you a lot.

Mr. ISLEY. It bothers us, and it bothers all of the people in this industry. This is what we have committed our entire association to since 1983.

Senator GORE. Is it a profitable industry?

Mr. ISLEY. I do not have access to the profits of this industry. We represent——

Senator GORE. Just in rough figures, is it making a lot of money?

Mr. ISLEY. As a matter of fact, I presume, because of other economic factors, that this industry is not profitable.

Senator GORE. Oh, gee, why do they keep selling these things, then?

Mr. ISLEY. The profitability has not been brought up as a matter of question for our association to handle.

Senator GORE. I thought they were making a lot of money. I saw the figures somewhere. I do not have them here, but there are some 2.5 million ATV's currently in use.

The point I am trying to make is that even if it concerns people in the industry that all these kids are being killed and injured, there are certain forces that keep the irresponsible activity going on.

And when you come here and say, well, we have our own plan to rein these forces in and get it under control, then you cannot even answer a basic question about whether or not a dealer has ever had his franchise taken away, and you do not know the profit figures, why do you think the conservative Republican members of this CPSC, which has done virtually nothing, say that your industry has been extremely irresponsible?

Are they wrong about that? Are they just too consumer oriented, and do they have an extremist view of what your industry has done or not done? Is that how you explain their statements?

Mr. ISLEY. Senator, I believe their statement is incorrect that this industry has been recalcitrant. We have moved even faster than their process allows.

Senator GORE. No, I would like you to speculate on the reason why they would make what in your view is a rash and inaccurate statement.

Do you think it stems from their inherent consumer activism? Do you think that is why they would mischaracterize you in your view?

Mr. ISLEY. Senator, it seems to me they were under considerable pressure today.

Senator GORE. So they were bending to pressure from Congress to say something about your industry that, in your view, is inaccurate?

Mr. ISLEY. I would like the record of our industry's safety activity to stand on its own and not become involved in a dispute with the Consumer Product Safety Commission.

Senator GORE. Well, I think the record of your industry is just appalling. It is just appalling. And I think that these four companies—Honda, Yamaha, Suzuki, and Kawasaki—these four companies ought to be ashamed for continuing to allow this many deaths and permanent disabilities of children and others to continue, month after month, week after week.

It is appalling. And then to come and argue that nothing should be done by the Consumer Product Safety Commission; that a voluntary action by the industry is sufficient; I think it really—you know, it is 1987; it is not 1897.

Mr. ISLEY. I am saying, Senator, that this industry is strongly motivated to take all effective means at their disposal to stop these injuries and these deaths. And we are doing it through state law; through labeling the machines; through educating the dealers and the parents.

We are taking what we consider to be very active and effective safety approaches to a problem that we do not want to continue.

Senator GORE. Are you in court trying to stop the section 12 action?

Mr. ISLEY. We are not involved in that action at all.

Senator GORE. Have you filed any briefs or statements with the Department of Justice on this matter?

Mr. ISLEY. In order to be clear about that, Senator Gore, we are an independent trade association representing the safety interests of these companies. We do not represent them in litigation, so we are not involved as the agency they're working with and dealing with that issue.

Senator GORE. Well, the matters involve safety. Have the four companies that you represent filed briefs or statements with the Department of Justice in an effort to prevent an imminent hazard action under section 12?

Mr. ISLEY. To my personal knowledge, and through my association, no, they have not. However, I have read probably what you have, that those have taken place somehow independently from our association.

Senator GORE. Okay, so your association is the one who comes before the public and says, we are trying to shape up. But they have other representatives who try to keep anything from happening?

Mr. ISLEY. No, as a matter of fact, I believe they have independent legal counsel that represents them before the Department of Justice.

Senator GORE. Yes, other representatives who try to stop the enforcement action.

Mr. ISLEY. We are not qualified to practice law.

Senator GORE. And you are not informed by your clients about legal actions that are directly relevant to safety?

Mr. ISLEY. We are not informed about the current action that is taking place. We are informed about the safety procedures that they want implemented.

Senator GORE. I see. So really, you do not know what legal actions they are taking with respect to safety standards.

Mr. ISLEY. That is correct.

Senator GORE. You do not know, because they will not tell you about any actions they may have taken with regard to dealers who may have violated their standards.

Mr. ISLEY. Not when it involves litigation.

Senator GORE. So we really ought to take your testimony with a big grain of salt, should we not? Because you do not know what your clients are doing that might affect their performance on safety?

Mr. ISLEY. Senator, I would take exception with that, and say you are trying to somehow cross over the legal representation with the safety representation.

We are highly involved in the very thing you are here to hear about, reducing injuries and reducing deaths.

Senator GORE. Well, if your argument is that a voluntary standard will suffice, and nothing more is needed——

Mr. ISLEY. That is not our argument; of course not. We believe in strong State laws, controlling ATV use. We believe in consumer and public information. We believe in dealer's responsible sales practices.

We have acted in all of these areas.

Senator GORE. Well, in the area of dealer responsible sales practice——

Mr. ISLEY. Yes.

Senator GORE [continuing]. If you rely on that as a principal means for enforcing safety, and a dealer doesn't go along with your standards, then the only recourse is for the companies to terminate their contractual relationship.

It seems to me the question of whether they have ever done that is not irrelevant to the mission you have been assigned.

And if the companies refuse to provide you with that information, then as I say, we really ought to take your testimony with a grain of salt.

Because they are using you as a front, as a mouthpiece, as someone to present a good impression and try to put a nice face on 300,000 injuries, and 700 deaths.

I mean, that is your job.

Mr. ISLEY. I disagree with you totally.

Senator GORE. And anything that is inconsistent with that, that is secret; that is not available; that is not public. And you are not to be privy to that.

Mr. ISLEY. But that comes up so seldom that there would ever be a case in litigation.

Senator GORE. Well, that is my point. They may never enforce their standards with a dealer.

Mr. ISLEY. They may never have a problem that goes to such an extreme that it requires termination of a dealership.

Senator GORE. They may never get tired of making as much money as they do on selling these things to the parents of young children. They may like to continue making a lot of money on it, and they may decide never to revoke a dealer's franchise.

That may also be part of the motivation for fighting tooth and nail against any kind of Federal action.

Mr. ISLEY. Senator Gore, I believe it is that characterization of a profit-minded industry that gets in the way of productive work between the private sector and the government.

Our industry has been very responsible in addressing safety concerns.

Senator GORE. Almost no one agrees with you on that. Even the members of this CPSC do not agree. Even Mr. Scanlon disagrees with you.

Mr. ISLEY. Would you be willing to keep an open mind as we started this hearing today, and take a look at the effective materials and programs and successes we have had in reducing the rate of injuries for the last two years?

Senator GORE. How many riders have you trained?

Mr. ISLEY. The hands-on one-day training course is something that I think has been overemphasized here because——

Senator GORE. How many have participated in that training?

Mr. ISLEY. Because—about 10,000 people to date have enrolled in that course.

Senator GORE. Ten thousand? How many riders are there?

Mr. ISLEY. There are over six million riders that we address through other information and education campaigns.

Senator GORE. There are six million altogether, and 10,000 of them have had the hands-on training course?

Mr. ISLEY. Have had the one-day hands-on training course.

Senator GORE. Is that, one-fifth of one percent, something like that?

Mr. ISLEY. Again, your making the leap——

Senator GORE. Is my math correct on that?

Mr. ISLEY. Your math is correct.

Senator GORE. Well, is that a figure that you are proud of?

Mr. ISLEY. The figure that we are proud of is delivering the capability to train tens of thousands of riders. The difficulty with the one-day hands-on training course, we have discovered, after making a good faith effort to make it available to all consumers, is that the riders will not voluntarily enroll in that course.

Therefore, we have developed safety seminars, which do not involve a full day; which involve one hour or two hours. We have developed a 20-minute videotape, which is available at every dealership in the country.

We have set up a toll free 800 hotline where people can call for mail safety information.

Senator GORE. Do you have an age limit on the children that you recommend as riders of ATVs?

Mr. ISLEY. Yes, the ATVs themselves are labelled, the adult sized models, everything from 90 cc and larger, are labelled "not for use by children under 14".

The youth models, 70 and 80 ccs, are labelled, "not for use by children under 12."

And the children's model, the smallest, slowest one available, is labelled "not for use by children under six."

There has been an exemplary safety record, by the way, for the children's model that is labelled "not for use by children under six."

Senator GORE. But six years old is when you start them?

Mr. ISLEY. Excuse me. That is not when we start them. The label says not for use under six. Now, we also caution that the parent's supervision is necessary and the decision on whether to allow anyone from six on up to ride rests with the parent.

The industry does not recommend that all six year old children can ride all ATV's.

Senator GORE. Do you require—you do not require training before purchase?

Mr. ISLEY. No. We label the machines and we give the owner safety information to work with. And we have training available.

Senator GORE. Dr. Morris, did I read your prepared statement correctly that you estimate that the cost to society of ATV injuries ranges as high as $1.5 billion?

Dr. MORRIS. If you extrapolate the number of permanent disabilities that we are seeing from this industry today, yes, that is correct, Senator.

Senator GORE. $1.5 billion, that is an expensive industry.

Well, I am concerned about this, and my questions have been sharp and pointed to Mr. Isley because I think a lot of people are really appalled at this industry. And it is sorely inadequate to try to remedy a situation as grotesque as this one by having you before a committee and trying to get you to realize that this is just an appalling situation.

That is why we have a CPSC, to enforce meaningful standards and try to prevent people like the ones that you represent from continuing business practices that result in a continuing record of death and serious injury.

And this hearing is not specifically on your industry, and you are in a tough position and I understand that. You do a very good job in trying to represent an industry that I think has behaved extremely irresponsibly, and I think most people agree with that.

And I do not think there is a lot of disagreement in the country, really, except from people who are in the industry. There are a lot of people in the industry that feel that the situation ought to change as well.

But I am sure you are embarrassed at having to defend this kind of record. The CPSC is the one that has to respond with affirmative action, and this record is relevant to the need for changes in the CPSC and that is why I pursue it.

I guess like a lot of parents of young children, I respond even more strongly when so many young children are involved. And you hear the kind of testimony that Dr. Morris presented and it certainly does make your blood boil.

Mrs. Brown, how does the leadership of the current CPSC compare with earlier Commissions that your committee has dealt with over its 15 year history?

Ms. BROWN. It is extremely laggardly compared to other Commissions. I would not even deign to call it real leadership at all.

Senator GORE. Did you want to comment on Mr. Thomson's testimony briefly?

Ms. BROWN. No, sir. I did not want to comment on Mr. Thomson's testimony.

Senator GORE. That is fine.

I have gone way over the time for the hearing. I will again ask each of you if you would be willing to respond to questions for the record.

Dr. Morris, let me give you a chance to respond to what you have heard about the ATV situation. You deal with this on a regular basis. How many patients do you see each month, would you say?

Dr. MORRIS. Well, it is difficult to say. Quite honestly, Senator, we have a window of opportunity right now. The summer months are coming. If we could do something immediately, we could interrupt the cycle at a time when it is absolutely critical, because we know we are going to see a tidal wave in the next four months.

But I am afraid that there is nothing that we are going to be able to do about that except after the fact.

Senator GORE. What would you do?

Dr. MORRIS. We have to get that message out. The fastest way to get that message out to parents is for the government to take an unequivocal stand. We have reviewed this body of information, these 12,000 pages that the ATV task force has put together, a very reasonable, scientific, document.

The Federal government should state: We have reviewed this isue from the Federal perspective and we think ATV's are a major problem. That message needs to be crystal clear. It does not need to be diluted in 12,000 pages. It needs to be concise.

And then maybe we can start reversing the trend of deaths, not reversing the trends the way my colleague has said, in user-related miles, which means that the number of deaths still go up because there are more vehicles out there; so it looks as if we are making progress.

We are not making progress when you get down to the microcosm level, when you get down to the individual family, when you get down to the individual lives that are wasted.

Senator GORE. I did not understand that Mr. Isley's statement was crafted that way. I got the impression that the number of injuries and deaths were going down.

Dr. MORRIS. Perhaps I misquoted him.

Mr. ISLEY. The number of injuries apparently for the last two years has stayed relatively level, while the number of vehicles in use has gone up. This is a turn-around time which we hope to capitalize on and do exactly what the doctor would like to have done.

In fact, I can privately perhaps suggest some remedies in his specific area that we can work with him to bring those number of injuries down. We have done it in other areas.

Senator GORE. But actually, the deaths and injuries have not come down, is that right?

Mr. ISLEY. The numbers have remained constant for 1985 and 1986.

Senator GORE. Well, I think we have exhausted the subject. But we are going to stay very involved in this. Many of us are interested and others have taken the lead on this issue, but this subcom-

mittee is going to be very, very concerned and interested about this.

And I just wish that Honda and Yamaha and Suzuki and Kawasaki would do more, and I wish the CPSC would do more.

Anyway, we have had a long day and I want to thank everybody for bearing with the subcommittee under these unusual circumstances. And I appreciate all the witnesses agreeing to respond to follow-up questions in writing, because my colleagues will have a number and I will have some as well.

So with that, the hearing is adjourned. Thank you.

[Whereupon, at 2:07 p.m. the subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. PAUL SIMON, U.S. SENATOR FROM ILLINOIS

I want to thank my distinguished colleagues for allowing me the opportunity to submit this testimony this morning. During the course of re-authorization of a government agency as vital as the Consumer Product Safety Commission, it is fitting to address an issue over which the CPSC should have authority—fixed site amusement park rides.

Sometimes it takes tragic circumstances to propel us into action. Since 1981, amusement park attendees have had no guarantee that fixed-site rides have been inspected because of a little-publicized exemption that the amusement park industry won in the budget reconciliation process. In 1984, a dozen people died senselessly. In 1985, the CPSC estimates that 3,110 people were injured at fixed site amusement parks. Unfortunately, updated statistics were not available on this important topic.

Amusement parks attract thousands of excited children and parents each year. A trip to Disneyland or Great America may be the highlight of the summer. Amusement parks are designed to entertain, delight, and thrill us. Danger has no role within amusement park gates. Unfortunately, without any guidelines for preventing and eliminating danger, there is mayhem on the midway. The screams of excitement can now all too easily turn into screams of terror.

Far too many amusement park related injuries have occured. With the increase in popularity of water-slides, the number of injuries has doubled in the last couple of years. The question is, "Can these fatalities and injuries be prevented?" To that, I answer a simple "Yes."

Prevention is the kay to promoting safety. I am planning to introduce a bill which would provide a three-pronged approach to assure the public of a carefree day at the amusement park.

1. The bill would permit federal engineers to investigate serious accidents or fatalities that occur on fixed site rides.

2. The bill would authorize the Comsumer Product Safety Commission to inspect fixed site rides only if the State in which the ride is located does not have an inspection program.

3. The bill would create a national clearinghouse within the CPSC to collect information on defective rides and notify other manufacturers of the same ride. This would prevent a defect in a ride in one state from affecting a ride in another state.

Discussions with the industry have resulted in a change that I will incorporate into my bill. To strengthen the prevention logic of the bill, federal pre-operational inspection would occur for new rides, if the state does not have an inspection program.

As of today, twenty-eight states, including, I am pleased to say, Illinois, have passed laws which provide some sort of inspection of amusement park rides. The industry has repeatedly stated that they would like the states to have jurisdiction over their operations. I strongly support this idea and encourage all states to pass comprehensive laws. However, the citizens of California—where no state agency has jurisdiction—deserve the same assurances of safety as the citizens of Maryland whose safety program is excellent.

The House Committee on Energy and Commerce, in its 1984 report, addressed an objection raised by the amusement park industry regarding the reporting of routine repair work. The Committee clarified the bill's intent by explaining that it does not expect the industry to report routine maintanance. My proposal mirrors this clarification.

Commissioner Terrence Scanlon testified during a hearing in August 1984 in the House of Representatives that the CPSC had neither the expertise nor the manpower to investigate the problems associated with amusement park rides. How many more children or men or women must die before the CPSC realizes that priority must be given to amusement park rides?

Other proposals suggest instituting an eighteen month commission to study the current laws and make a recommendation as to who should perform the oversight

of the industy. How would we answer the parents of a child who has been paralyzed, while awaiting the suggestions of yet another commission. We have the opportunity to prevent more injuries and more deaths. We do not need more studies; we need action.

No industry should be exempt from oversight. Allowing the amusement park industry to investigate itself is like asking a naughty child to devise his or her own punishment. The airlines, a highly technical and intricate industry, do not police themselves. Should amusement park rides, some of which are more complex and sophisticated than some aircraft, be exempt from inspection? Of course not.

Some years ago Hollywood treated us to a flurry of thriller movies: "Airport," "The Towering Inferno," "Jaws." A movie called "Rollercoaster" was also produced. As you can imagine, the plot focused upon a horrible accident in an amusement park. In the interest of the citizens of this nation, let us leave such dangers to the movie screen.

Mr. Chairman, again, I thank you for this opportunity to bring the issue of amusement park safety to the attention of the committee.

STATEMENT OF THE ART SUPPLIES LABELING COALITION

The Art Supplies Labeling Coalition (Coalition) strongly supports the re-authorization of the Consumer Product Safety Commission (CPSC) with sufficient funding to effectively carry out the regulation of potential chronic hazards in art materials, in addition to their ongoing regulation of acute hazards posed by some products. The Art Supplies Labeling Coalition is a group of consumer and industry organizations interested in art materials labeling and includes Artists Equity Association, The Art & Craft Materials Institute, Hobby Industry Association of America, National Art Materials Trade Association, Pencil Makers Association, and Writing Instruments Manufacturers Association.

CPSC recently issued an advisory opinion which indicates that chronic hazards in household chemical substances, including art materials, are subject to the automatic labeling requirements of The Federal Hazardous Substances Act (FHSA). (Exhibit A) We urge that CPSC be given strong Congressional support to bolster its effort to protect consumers from chronic hazards in household products.

The Coalition materially assisted in the development of ASTM D-4236, a national consensus standard for chronic health hazard labeling of art materials, the first voluntary standard we know of to address chronic toxicity.[1] It was passed in 1983 and has gained 85-90% compliance among the industry, yet if faces extinction if state governments continue to pass conflicting legislation or if CPSC does not take the lead in regulating chronic hazards in art materials. Six states [2] currently have laws which are being administered differently and four more states are proposing conflicting bills.

ASTM D-4236 provides for uniform health and use labeling to the consumer at a reasonable cost to manufacturers and thus ultimately to the consumer. This voluntary standard also allows for the use of a certifying organization so that smaller manufacturers can bear the cost of compliance more easily and which keeps labels and labeling procedures uniform. Two members of the Coalition, the Art & Craft Materials Institute, Inc. and the Pencil Makers Association are such certifying organizations and currently certify art materials to ASTM D-4236.

In fact, the Art and Craft Materials Institute (Institute) has sponsored a certification program since 1940, certifying that children's art materials are completely non-toxic,[3] and that many meet standards of quality and performance. This certification program has received the endorsement of experts in the field of toxicology and has been called one of the finest industry programs in existence. It has been a responsive program, evolving to meet new challenges and to include more products. Most recently, in 1982, the program was expanded to include a broad spectrum of adult art and craft materials, ensuring that health and use labels are affixed where appropriate, in accordance with ASTM D-4236 and FHSA.

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[1] By way of background, in the late 1970's, there were claims made by several professional artists to the effect that art materials were not adequately labeled to disclose potential chronic health hazards. Federal legislation was introduced but its Congressional sponsor persuaded the artists and the industry to develop a national voluntary standard in lieu of legislation.

[2] California, Oregon, Illinois, Tennessee, Florida, Virginia.

[3] By non-toxic, the Institute means that the product has been evaluated and found to contain no substances that would pose either a chronic or acute risk of injury.

The Institute has a consulting toxicologist, Woodhall Stopford, MD, of Duke University and a Toxicological Advisory Board. The Toxicological Advisory Board is composed of three eminent toxicologists to act as review board on matters of toxicity and to review the criteria used by the Institute toxicologist. Product formulas for every product in the certification program are submitted by the manufacturers to the toxicologist for his evaluation as to whether a product is non-toxic or needs cautionary labeling. These formulas undergo an extensive toxicological review and testing as deemed necessary by the toxicologist. Currently over 80 members of the Institute have certified more than 15,000 art products and the process is continuing. Toxicological evaluation under this program proves that only 15% of art materials require hazard labeling and most of these already carried acute warning labels.

The Institute also conducts annual random testing of products to ensure that they continue to be as represented to the Institute. Moreover, the Institute has an ongoing record of banning or restricting ingredients prior to any governmental action and has been in the forefront of chronic hazard evaluation and labeling.

The U.S. Public Interest Research Group (PIRG) claims that children in grades K-6 are "routinely" exposed to hazardous art materials in the classroom and contends that children are using hazardous art materials. Its claim is, we believe, based on faulty data, derived from faulty methodology. The PIRG groups surveyed school purchasing officials to determine what is purchased by the schools rather than surveying children in the classroom to determine what art materials they actually use.

The Coalition believes that the surveys are grossly misleading and challenges its assertion about the use of hazardous products by children. We do not believe that kindergarten teachers or teachers in grades 1-6 permit their pupils to use hazardous materials of any kind. Moreover, the PIRG surveys do not differentiate whether such products are used in elementary grades, secondary grades, or by teachers themselves after students have left the classroom. If toxic substances such as rubber cements, solvents, fixatives and lead glazes are actually reaching grades K-6, these products already bear strong acute cautionary labeling and the words "keep out of reach of children."

Based on our experience, we do believe that children in grades K-6 principally use the following art material products:

1. Crayons,
2. Tempera paint,
3. School paste,
4. Pencils and colored pencils,
5. Modeling clay,
6. Chalks,
7. Pastels,
8. Markers, and
9. Finger paints.

For more than forty years these products have been evaluated for toxicity potential in the Institute program and found to be non-toxic. The art material industry knows of no serious injury in that period of time arising from the use of these products.

A "serious injury" under the program is one requiring medical treatment. We know that children, particularly in the pre-K and K grades, may put crayons or paint in their mouth. The products are not intended as food products but, aside from some temporary discoloration from the pigment, no child to the best of our knowledge has ever been hospitalized for the intentional or inadvertent "ingestion" of these products for acute or chronic illness. Generations of students, perhaps even members of this Committee, have benefited from the use of these products through the stimulation they provide to children's imaginations.

We also know that many elementary school districts or elementary school purchase officials specify the use of "CP or equal" or "AP or equal" for art material products. The same frequently specify pencils with the PMA certification mark or equal.

To be meaningful to the consumer, we believe national uniform labeling is paramount and, since CPSC has long regulated art materials for acute hazards, we encouraged CPSC over the years to become further involved in regulating chronic hazards. CPSC staff monitored the development of ASTM D-4236, but when we urged adoption of ASTM D-4236 as a mandatory standard to gain preemption, CPSC was unable to do so as it was required by statute to defer to an effective voluntary standard which has substantial compliance.

On March 19, 1987, CPSC issued Advisory Opinion No. 309 which stated that household products with chemical substances that may cause chronic health hazards are subject to the FHSA. It further declared that these products must be la-

beled in accordance with Section 2(p)(1); that products labeled in accordance with ASTM D-4236 comply with Section 2(p)(1); and that Section 2 (p)(1) preempts inconsistent state requirements addressing the same risk.

Regulation of potential chronic hazards in art materials by CPSC will allow the extensive toxicological evaluation and health hazards labeling accomplished by the vast majority of the industry to remain in place and not be wasted. A list [4] of those products evaluated by the Institute under ASTM D-4236 is enclosed. Large manufacturers such as 3M, Borden and Gillette, are complying with it independently. CPSC regulation will bring into compliance that small minority of art products that are not yet evaluated and labeled. It will also provide for national uniform health and use labeling and avoid conflicting state-by-state labeling. Finally, it will allow individual manufacturers to be regulated by one agency for both acute and chronic health hazards.

We have urged CPSC to develop evaluation criteria for chronic hazards, which we feel will parallel those already in use by the Institute and others certifying compliance and will provide an efficient way to monitor the remaining 10-15% of art materials not complying with ASTM D-4236, without creating an unwieldy product-by-product review. Review based on criteria would allow for a flexible program, able to keep up with new and changing procedures for each product.

The Consumer Product Safety Commission studied the art materials industry in the late 70's and completed a fairly broad study of art material labeling in 1981-82. The Commission has on more than one occassion stated that it has not found any significant art material problem to justify its listing as a priority project for the Commission, despite the claims of the various PIRG groups.

CPSC has the legislative authority to act to prevent acute and chronic hazards, particularly to children under both the Consumer Product Safety Act and the Federal Hazardous Substance act. We believe the Commission should be given an opportunity to do so. There is no demonstrable problem of national proportion to require new legislation now. At the same time, we believe that if CPSC does not act in a reasonable time to establish uniform toxicological criteria for chronic toxicity labeling, that it may be appropriate to consider national legislation to prevent the development of a hopeless conflict among State laws and regulations and their administration.

Any such Federal legislation should only require that CPSC be the regulating agency, that labeling and evaluation be national in scope, and that states be preempted from addressing the same risk with conflicting criteria or labeling—all things we already have under the voluntary ASTM D-4236 standard. We believe that CPSC's implementation of its chronic hazards labeling program should be allowed to proceed and oppose any legislation unless this implementation does not take place. We fear that any legislation introduced to accomplish what is already available might further delay this process and deprive consumers of the benefits they already have.

Statement of Barbara Hackman Franklin

Mr. Chairman and Members of the Consumer Subcommittee of the Senate Committee on Commerce, Science, and Tranportation, I very much appreciate the opportunity to present this statement in connection with these hearings.

I was privileged to be one of the orginal members of the U.S. Consumer Product Safety Commission, serving from its creation in May of 1973 until February 1979, nearly six years of a seven year term. I was the Commission's first Vice Chairman and served an additional term as Vice Chairman during the time I was a Commissioner.

Currently, I am Senior Fellow at the Wharton School of the University of Pennsylvania and Director of the Wharton Government and Business Progrm. I am also President and Chief Executive Officer of Franklin Associates, a Washington based management consulting firm specializing in strategic planning. In addition, I am a director of five publicly held corporations: Aenta Life & Casualty, The Dow Chemical Company, Westinghouse Electric Corporation, Black & Decker Corporation, and Automatic Data Processing, Inc. My experience, therefore, has given me the perspective of one who served at the Commission in its early years and whose day-to-day activities since have centered in the business world.

The Commission has suffered a good deal of turmoil in recent years—at least if one is to believe the press accounts. This has led to questions from Congress and

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[4] The list was not reproducible.

other about what ought to be done to improve matters. The Consumer Subcommittee is to be commended for this oversight hearing.

I would like to address two major issues: whether the Commission ought to remain independent and whether a collegial body is its best form or organization. Before commenting on those issues, I have some observations to make about this relatively young agency.

The Commission deserves to be judged on its record of accomplishment and not on rhetoric or criticisms about its current leadership. The key question is: are consumer products markedly safer today and have lives been saved as a result of its efforts? The clear answer, in my view, is yes.

The Commission has had many specific successes over the years. I'm proud to have participated in many of them. To recount a few: child fatalities from accidental poisonings are down by two-thirds. Children's products—toys, cribs, strollers, playground equipment—are demonstrably safer. So are chain saws, power lawnmowers, power tools, upholstered furniture, and countless other products. Since 1973 more than thirty million units of unsafe product have been recalled and corrected under Section 15 of the Consumer Product Safety Act. In numerous cases, a recall affecting one brand has triggered development of an industry-wide voluntary standard which has improved the safety of every unit produced. Notable cases in point are hand-held hair dryers and automatic coffee makers.

But, the most significant accomplishment is the one most often obscured—the very existence of the Commission and its visibility has stimulated producers and sellers of consumer product to become more safety conscious. It is this accomplishment which I see clearly from the business perspective.

Responsible companies now have in place processes to design safety into new products, to ensure better quality control in manufacturing, to label products more precisely, to provide better instructions for consumers, and to respond more quickly to problems. Many companies have toll-free hotlines for consumers and mechanisms for swift recall of unsafe products. Boards of directors have created committees on health and safety to oversee the safety mechanisms management has put into place. I serve on such committees for two corporations and can attest to the very serious nature of their deliberations.

In short, product safety in now part of the culture of a majority of U.S. companies. Responsible business leaders understand that it is just good business. This new climate probably would not have evolved without the prodding and muscle-flexing of the Consumer Product Safety Commission.

It is also worth noting that these results have been achieved without a large expenditure of taxpayers' dollars. CPSC's budget of $34 million this year is, in real dollars, less than the budget we had fourteen years ago. The staff—always dedicated and loyal—are considerably fewer today. My conclusion: the CPSC has been a good "buy" for U.S. consumers and taxpayers.

INDEPENDENCE: THE KEY TO VISIBILITY

Critical to the Commission's success has been its visibility to the public. That visibility, in my judgment, is a direct and important result of its independence.

When the Commission makes a decision, it has the authority to implement it. There is no need to clear that action with any other government official. There are no cabinet secretaries, under secretaries, or others to conduct a "policy review."

A recent report by the General Accounting Office suggested that Congress, in creating the Commission as an independent agency, was concerned that it be insulated from economic and/or political pressures. The more crucial concern is whether, despite any such pressures, the Commission still has the freedom to reach its own decisions, go public, and implement them. Preserving that freedon is important.

Some have suggested placing the agency in a larger department. That would only weaken it. The Commission would become hostage to the interminable turf and policy battles that bedevil every agency in every administration, and between every agency and every White House. Cabinet secretaries, far from defending the Commission, would be forced into compromises so as to save or expand programs to which they assign higher priority. And, the Commission might never be heard from again. The Commission's visible presence is essential to keeping the emphasis on consumer product safety.

COLLEGIAL BODY VS. SINGLE ADMINISTRATOR

My preference is for a collegial body, for two main reasons. First, I think the resulting decisions are better; and second, such a process permits greater involvement by those concerned with the outcome.

The deliberative process which occurs when a group of serious individuals discusses a potential regulatory action in which all share responsibility tends to be more thorough and thoughtful.

Over the years, I have noticed that it is usually the chairmen who prefer the single administrator form. The first Chairman was fond of saying that a collegial body should have an odd number of members—and "three is too many." To be sure, the collegial form of organization is somewhat cumbersome. The Chairman and Commissioners are equal and independent when it comes to substantive areas of deliberation, but the Chairman has the added responsibility of administering the agency. The Commissioners do not report to the Chairman, nor is he/she specifically responsible to them. To make the agency work harmoniously with so many independent voices, the Chairman must take time to counsel with the Commissioners and keep them abreast of how he/she is running things. This can be time-consuming and frustrating; many Chairmen simply do not want to bother. When they don't, tensions with the Commissioners inevitably flare over all kinds of administrative matters, often because the Commissioners feel they are in the dark about how the Chairman is exercising his power. Nonetheless, the extra effort needed to make collegial organizations work is worth it—given the better quality of substantive decision-making that results.

Collegial organization also permits greater access to the decision-making process by outside interests—be they consumer or business. They have opportunity for input at the staff level and then again at the Commission level to each Commissioner. In contrast, the single administrator system places more power squarely in the hands of the staff. Decisions are closer to being a "fait accompli" by the time they reach the administrator's desk, and private sector interests have much less opportunity to participate in the process.

If Congress is truly concerned about keeping the Consumer Product Safety Commission strong, vigorous, and effective, it can best achieve those aims by leaving the agency's organization structure alone. It is not broken and therefore does not need fixing.

Thank you for the opportunity to present these views.

STATEMENT OF FRANKLIN FRAZIER, ASSOCIATE DIRECTOR, HUMAN RESOURCES DIVISION, GAO

Mr. Chairman and Members of the Subcommittee:

As requested, we are pleased to submit for the record the following testimony on the administrative structure of the Consumer Product Safety Commission (CPSC). We issued a report [1] on this subject to Chairman Henry Waxman, Subcommittee on Health and the Environment, House Committee on Energy and Commerce, on April 9, 1987.

Chairman Waxman requested that we (1) evaluate the current CPSC organization and administrative structure, considering reductions that have occurred in the agency's budget and staff and changes in its mission approach, to determine whether CPSC's functions could better be carried out by a single administrator, and (2) consider whether CPSC should remain a separate agency or be placed within another regulatory agency or an executive department.

GAO FAVORS THE SINGLE ADMINISTRATOR STRUCTURE FOR CPSC

Although we could find no objective criteria to measure the effectiveness of one administrative structure compared with another, we did find several indicators that suggest CPSC—as a regulatory agency responsible for protecting citizens' health and safety—could benefit from changing to a single administrator.

The rationale for establishing independent commissions, such as CPSC, includes the assumptions that (1) long-term appointment of commissioners would promote stability and develop expertise, (2) independent status would insulate them from undue economic and political pressures, and (3) commissioners with different political persuasions and interests would provide diverse viewpoints.

However, since CPSC was established, there has been little stability in its leadership; both present and former CPSC officials cited leadership turnover as the cause of much uncertainty within the Commission. For example, in its 14-year history, CPSC has had nine Chairpersons—four acting and five confirmed.

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[1] Consumer Product Safety Commission: Administrative Structure Could Benefit From Change (GAD/HRD-87-47, Apr. 9, 1987).

Additionally, since 1973 CPSC has had eight executive directors, of whom five served in an acting role. One of the acting executive directors was later appointed as the executive director. Furthermore, during 1976, 1979, 1982, and 1985, the position of executive director was vacant for periods of 1 to 10 months. Finally, of CPSC's 13 former Commissioners, 9 did not complete their appointed terms. The high turnover rates in these key leadership positions have not promoted the stability or the development of expertise envisioned in the act that created CPSC.

Relative independence from political and economic forces was often cited in CPSC's legislative history as a reason for creating it as an independent commission; however, real independent status is difficult to achieve. Both the Congress and the executive branch, through various mechanisms, are able to exert considerable influence on CPSC. For example, the Office of Management and Budget is able to exert considerable influence through its budget review and Paperwork Reduction Act requirements.

Another rationable for independent commissions is that they provide diverse points of view. However, the Commissioners' voting records do not show much diversity on issues they have voted on over the past 5 years. We recognize that voting records are not the only indicator of diversity, because much discussion abut the pros and cons of various issues obviously takes place before votes are taken. But, in the final analysis, it is the Commissioners' votes that result in policy positions. At CPSC, from fiscal year 1982 through fiscal year 1986, the Commissioners voted for the options recommended by the staff nearly 90 percent of the time, and the Chairperson voted with the majority 95 percent of the time. CPSC's Commissioners voted unanimously in 73 percent of the votes taken during this period.

This degree of unity between the Chairperson and the other Commissioners at CPSC is not unusual for federal regulatory agencies. According to a 1977 study,[2] "* * * the influence of chairmen in comparision with that of their colleagues is substantial, sometimes determinative." The study further stated that "in formal proceedings and other instances when there are collective decisions, the chairman's decision has great impact."

Most of the high-level officials we interviewed—such as former Chairpersons of CPSC, single administrators, and other officials of other health and safety regulatory agencies, and officials of public interest and industry groups—believed that a commission is not an effective administrative structure for CPSC. All former confirmed Chairpersons and former executive directors of CPSC indicated that CPSC's administrative structure should be changed to that of a single administrator. In discussing their opinions, these officials cited many problems with the current structure, incuding the following:

Commission decisions are not prompt.

The Commissioners often do not understand the technical issues that the staff has to deal with in its work.

There is competiton among the Commissioners concerning the use of CPSC resources.

The commission structure is more appropriate for an agency with a significant adjudication function, which is not a large part of CPSC's responsibilities.

The Commissioners tend to "micromanage" the day-to-day operations and are too involved with the process of preparing the budget and operating plan.

On the other hand, others interviewed, including three of the five Commissioners as of May 1986 and one of the two public interest groups, believed that for CPSC the Commission structure was better than a single administrator. Their reasons included: (1) the commission structure is necesesary in order for CPSC to maintain its independence and (2) that structure ensures continuity, exchange of ideas, and a mix of perspectives. This need for a mix of perspectives—including diversity of background, areas of expertise, and political considerations—outweighs the disadvantages of a commission, according to these individuals.

About 3 percent of CPSC's annual budget is spent on the salary, supporting staff, and other associated costs for the four Commissioners (not including the Chairperson). CPSC's fiscal year 1986 operating plan showed that about $1.1 million was budgeted for these four Commissioners. About $839,000 of this was for their salaries and their staffs; $59,000 for operating costs, such as travel and subscriptions for priodicals; and $215,000 for their share of common costs, which are primarily rent and utilities. Therefore, eliminating the four Commissioners and changing to an organization with a single administrator would eliminate the $1.1 million in bugeted

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[2] David M. Welborn, *Governance of Federal Regulatory Agencies* (Knoxville: The University of Tennessee Press, 1977), p. 109.

costs for the commission structure. It should be noted, however, that CPSC has had two Commissioner vacancies since August 1986 and, as long as these positions remain vacant, CPSC's cost for the Commissioners will be considerably less than the amount budgeted for in fiscal year 1986.

Seven of the eight other health and safety regulatory agencies that we identified have single administrators. These are the Environmental Protection Agency, the Federal Aviation Administration, the Food and Drug Administration (FDA), the Food Safety and Inspection Service, the Mine Safety and Health Administration, the National Highway Traffic Safety Administration, and the Occupational Safety and Health Administration. We interviewed officials in five of these agencies, all of whom supported the single administrator structure, particularly because they believed this structure would enhance the decision-making process.

If CPSC were changed to a single administrator structure, should the single administrator have a fixed term of office and be removable from office only for cause? This question was raised to us by the Subcommittee. Although we did not research this question during our review, we did observe that all of the single-headed executive agencies serve at the pleasure of the President. With the view that CPSC's duties and responsibilities are similar to those of the health and safety organization listed above, we would recommend that a single-headed CPSC be similarly organized. (See Attachment I for legal background.)

A number of studies, such as those by the Hoover Commission and the Ash Council, have been done over the last 50 years on regulatory commissions. All of the studies we reviewed found some significant problems with the commission structure. Although some of these studies recommended changes to improve such agencies, others found little value in the commission approach and advocated changing it. Some of these studies recommended replacing the multimember commissions with agencies headed by single administrators.

Based on these factors, we propose that the Congress consider amending section 4 of the Consumer Product Safety Act to provide for a single administrator appointed by the President with the advice and consent of the Senate.

SEPARATE AGENCY OR PART OF EXECUTIVE DEPARTMENT?

We could find no criteria or preponderance of evidence for determining whether CPSC should remain as a separate agency or be made a part of an executive department. CPSC's legislative history shows that most of the debate in the Congress concerning the creation of CPSC centered on the question of the need for a separate agency. The Congress considered several options for carrying out consumer product safety functions and responsibilities. These included adding more consumer product safety functions to the role of FDA; creating a separate consumer safety agency with three different commissions—Foods and Nutrition, Drugs, and Product Safety—each headed by a commissioner; and establishing an independent regulatory commission.

Some of the arguments that influenced the decision to establish CPSC as an independent commission could best carry out the legislative and judicial functions of the Consumer Product Safety Act because it would be better insulated from economic and political pressures; an independent commission assures high visibility for consumer product safety; and regulatory programs in executive departments typically suffer from lack of adequate funding and staff.

Our discussions with CPSC and other public and private sector officials suggest that disagreement still exists about CPSC's separate organizational status. For example:

Three of the four former confirmed CPSC Chairpersons told us that CPSC should not remain a separate agency; the other Chairperson told us that it did not matter. On the other hand, the current Commissioners and most of CPCS's high-level staff said that CPSC should remain a separate agency.

Officials at the Department of Health and Human Services disagreed as to whether CPSC should be in FDA. One high-level official told us that CPSC should be placed in FDA; another felt strongly that it should not.

Similarly, differences of opinion exist in the private sector. For example, of the seven groups interviewed, officials in four thougnt CPSC should remain a separate agency, two thought it should not, and one expressed no opinion.

The officials who supported placing CPSC in an executive department generally cited one or more of the following reasons for their positions: (1) the Secretary of an executive department can better protect the agency from budgetary cuts; (2) the mission of CPSC is compatible with the mission of the Department of Health and Human Services; and (3) there is a need to reduce the number of small separate

agencies reporting to the President. Officials who favored separate agency status for CPSC generally cited one or more of the following reasons for their position: (1) it provides more visibility to consumer product safety; (2) it means that consumer product safety does not have to compete with other high-priority missions within an executive department; and (3) it reduces the opportunity to politicize the agency.

We compared the organizational status of CPSC with that of eight other health and safety regulatory agencies; we tried to determine if there was any rationale for the organizational status or administrative structure of these agencies. We found differences in the status and structure of the nine regulatory agencies—that is, six are part of executive departments, while three are separate.

Finally, major studies of independent regulatory commissions do not contain any consistent recommendations or criteria for their organizational status within the federal government. For example, the Brownlow Committee recommended in 1937 that independent regulatory commissions be integrated into the executive branch, where they would become agencies within executive departments. The Ash Council in 1971 recommended replacing regulatory commissions with organizations headed by single administrators reporting to the President. On the other hand, the Hoover Commission in 1949 recommended maintaining independent status for regulatory commissions.

Because of the lack of criteria and evidence for determining whether CPSC should remain as a separate agency or be made part of an executive department, we are making no recommendation about CPSC's organizational status.

ATTACHMENT I.—LEGAL REVIEW OF INDEPENDENT STATUS OF REGULATORY AGENCIES

We were asked to comment on the authority of Congress to limit the President's power to remove a single administrator only "for neglect of duty or malfeasance in office," as is currently the case with members of the Commission, 15 U.S.C. 2053(a). Although the Supreme Court has not squarely addressed this issue, it has considered challenges to the President's removal of commissioners of independent commissions. The Court has resolved these challenges by examining the functions performed by the agency involved.

In *Myers*, v. *United States*, 272 U.S. 52 (1926), the Court held that the President had an "illimitable" power to remove a postmaster, an executive officer restricted to the performance of executive functions, notwithstanding an act of Congress to the contrary. However, in *Humphrey's Executor* v. *United States*, 295 U.S. 602, 628 (1935), the Court held that Congress may restrict the President's power to remove a member of an independent regulatory commission (specifically, the Federal Trade Commission) that "acts in part quasi-legislatively and in part quasi-judicially." The Supreme Court reiterated this view in *Weiner* v. *United States*, 357 U.S. 349 (1958), holding that the President could not remove a member of the War Claims Commission without cause where the statute reflectd a clear congressional intention that members not be removable at the whim of the President. Thus, to the extent the CPSC performs, and continues to perform, functions that are quasi-legislative and quasi-judicial, these cases suggest that Congress could similarly limit the President's power to remove a single administrator. However, the Supreme Court has not considered whether the rationale of these decisions applies where the functions of a regulatory agency are placed under a single administrator.

Putting aside the issue concerning the constitutional authority of the Congress to limit the President's removal power, the use of multimember commissions to head independent regulatory commissions gives the Congress additional mechanisms (such as staggered terms and appointments) to assure institutional independence. The greater independence afforded by a multimember commission, rather than any legal doubts concerning the Congress' authority to limit the removal of an administrator of a independent regulatory body, most likely explains why the Congress in the past has opted to head independent regulatory bodies with multimember commissions rather than single administrators.

STATEMENT OF STEVE SANDERS, GENERAL MANAGER, SANDERS HONDA, SPRINGFIELD, TN

Mr. Chairman and Members of The Consumer Subcommittee

Thank you for the opportunity to testify at this hearing today. I was educated in the Tennessee Public School System and received a Bachelor of Science Degree in Business Administration at the University of Tennessee. I am married and have a 9 year old son. I am a member of the Civitan Club, Vice President of the Robertson

County Fair Board, and an active member of Springified Baptist Church. I have been a Honda motorcycle and ATV dealer since 1981.

I share this information with you today because the news media has portrayed dealers as untrained, cold hearted, fortune seeking individuals. This is simply not true. We are small independent business people who are vital ingredients in our communities. Sanders Honda has sold over 2,500 ATVs since 1981. We are one of the top 50 Honda ATV dealers in the country. Our annual sales is approximately $1.6 million per year and we employ 10 people. Sanders Honda devotes its time, money, and human resources to help charity organizations and sponsors youth athletic teams in many local communities. Most dealers have similar working relationships in the towns they serve.

My first personal experience with our system of government came on May 21, 1985. I attended a United States House of Representatives Committee on Government Operations, Commerce Consumer and Monetary Affairs Subcommittee, hearing. What a frustrating experience. I watched U.S. Congressman align themselves on party sides, and take cheap verbal shots at each other. The experience was entertaining, but not exactly a tribute to our political system. The Consumer Product Safety Commission was under investigation that day. Here we are two years later, and the CPSC is still under fire. I would like to address the CPSC's conduct then and today.

In 1985 the CPSC was a mockery of our system. Ex-commissioner Stuart M. Statler became the voice of the commission. Every time he spoke, Chairman Terrance Scanlon would deny that Statler's comments were official CPSC positions. Stuart Statler played judge, jury and prosecutor convicting the ATV Industry before the CPSC ever officially began investigating the ATV Safety Issue. Mr. Statler made so many remarks that he could not substantiate that he failed to appear at the first public hearing in Jackson, Mississippi. With his credibility, he probably did the right thing.

I testified at that hearing, and two others, and attended the last CPSC hearing in Los Angeles. During those months Mr. Statler continued to leak information, and the other commissioners continued to squabble over which direction to take. Finally, prior to becoming unemployed, Mr. Statler resigned. Here we are two years later, and the newest commissioner, Ann Graham is the spokesperson for the CPSC on national television. Commissioner Graham never attended a hearing, but all of a sudden she is an expert on the ATV industry. I would like to see the Justice Department investigate if Mr. Statler was legally acting within his powers as mandated by Congress. I also think commissioner Graham should excuse herself from any decision pertaining to the ATV Industry. She became a commissioner much too late in the study to do an effective job. I also realize that neither of these recommendations will ever be acted upon.

While the CPSC was awkwardly conducting their business, Sanders Honda was also very active. With the help of the Specialty Vehicle Institute of America, four employees of my dealership became the first rider training instructors in Tennessee. We were very excited about being able to train our customers on how to properly ride an ATV. We did several things to promote our course. We ran ads in newspapers, advertised on television, and included training in sales promotions. To date we have trained 78 people at a total cost of $3,500. This is an average cost of $45 per person. With such poor results and high costs, our training program was economically hard to justify.

In the fall of 1986 a different approach was taken. People in our agricultural community simply were not interested in hands on training. We decided to educate children in public schools with 30-45 minute audio-visual seminars. We also promoted ATV Safety at the store, at health fairs, mall shows, outdoor shows and boat shows. In September of 1986 Jesse Holman Jones Hospital and Sanders Honda co-sponsored the first ATV Safety Seminar in Middle, Tennessee. Our panel consisted of three local medical doctors, a representative of the SVIA and myself. Our seminar was very well received, very positive, and all that attended left with new knowledge on ATV Safety. We continue to work with the local medical profession. Together we have made a real impact in our community.

Our last education program was held May 2, 1987 at a local middle school. We showed a video tape, discussed ATV Safety and had ATV demonstrations. It was at this seminar that I learned our efforts were finally paying dividends. Dr. Walter W. Wheelhouse, our local orthopedic surgeon informed me that he was very concerned with the number of soccer and houseback riding injuries he was seeing. He also informed me that he had not treated an ATV accident or admitted an ATV accident victim to the hospital in over a year. You have no way of knowing how satified that made me feel. But we're not finished. We will continue to develop our education

program. Two years ago I felt hands on training was the only way to solve our injury problem. Now I know it can be done, and will be done through effective, cooperative education programs.

As for a ban on three-wheeled ATVs, I think a well organized, nonpartisan study of CPSC findings would show that rider error and rider abuse are the key factors, not the vehicle. How can you blame the vehicle when 70% of child accidents involved no parental supervision? How you can you blame the vehicle when 50% of those accidents involved children on adult sized machines, riding on paved roads, riding double, and riding without protective gear? I don't think you can. Parents must accept the responsibility for the health and welfare of their children. It is very easy, after the fact, to blame someone else, but awfully hard to accept the blame yourself. I wonder where most of these parents were when their children were injured?

In closing, I would ask this subcommittee to take a long hard look at the Consumer Product Safety Commission. With all of the political ramifications of this commission, the inability to keep the commission seats filled and the totally unacceptable job done on this issue, I think the CPSC should cease to exist. One person should be held accountable and responsible for the actions of this agency. In my business, I may not always be the one that makes the mistake, but I'm always the one responsible. I like it that way, and thats why our education program works so well. I am responsible. Again thank you for the opportunity to testify here today.

STATEMENT OF MICHAEL MCCANN, PH.D., C.I.H. OF THE CENTER FOR OCCUPATIONAL HAZARDS

I am respectfully submitting this testimony for the record of your May 13, 1987 hearing on the reauthorization of the Consumer Product Safety Commission. I would also like to thank the Subcommittee for requesting that I offer this testimony.

My name is Michael McCann and I am Executive Director of the Center for Occupational Hazards, a national clearing-house for research and education on hazards in the arts. I have a Ph.D. in Chemistry from Columbia University, and am certified in the Comprehensive Practice of Industrial Hygiene by the American Board of Industrial Hygiene. In the 13 years I have been working on art hazards, I have written two books on the subject—"*Artist Beware*" and "*Health Hazards Manual for Artists*," have given over 200 lectures on art hazards to artists' organizations, art schools, public schools, etc., and am a frequent consultant on this topic. (See resume, appendix 1)

I am also founder and Executive Director of the Center for Occupational Hazards (COH), a national clearing-house for research and education on hazards in the arts. COH operates the Art Hazards Information Center which receives 50 letters and telephone calls daily on art hazards from artists, schools, government agencies, physicians and Poison Control Centers. COH also publishes a newsletter on art hazards, and offers lectures, consultations and courses on the subject. (See COH brochure, Appendix 2)

I have three major points to make in my testimony:

(1) Artists, hobbyists, teachers and even children are becoming ill as a result of overexposure to art materials.

(2) These illnesses are occurring because of inadequate labeling of art materials.

(3) There is a need for federal legislation to ban toxic art supplies for a elementary school and to require chronic hazard labeling on all art materials.

1. People are becoming ill from overexposure to art materials.

WHAT TYPES OF ILLNESSES ARE OCCURRING?

COH's Art Hazards Information Center receives many inquiries from artists, teachers, parents, Poison Control Centers, etc., reporting symptoms which they think are related to their art materials. In many cases these have been verified by physicians and some have been reported in the medical literature. This includes both immediate or acute poisoning and long-term or chronic poisoning. Examples of the types of diseases that have been found among artists include: lead poisoning among potters, painters, stained glass workers, copper enamelists; silicosis among potters, stone sculptors, jewelers, foundryworkers; chemical pneumonia among jewelers, welders; emphysema in printmakers; mercury poisoning among painters, metalworkers; nerve damage in commercial artists, silk screen printmakers; miscarriages and birth defects in silk screen printmakers, photographers; heart attacks in furniture refinishers, printmakers; liver damage in silk screen printmakers, plastics

sculptors, commercial artists; mesothelioma (cancer of lining of chest cavity) in a ceramicist; asthma in potters, photographers, batik artists; leukemia and destruction of bone marrow in painters, lithographers, metal sculptors; and kidney damage in oil painters, jewelers

Appendix 3 gives references for some of these illnesses, and Appendix 4 gives some case histories.

A few epidemiological studies have also found that artists have higher rates of certain types of illnesses. A National Cancer Institute study in 1981 found that male artists have significantly higher rates of bladder cancer, kidney cancer, leukemia, colon cancer and brain cancer than the rest of the male population; for women artists there were excesses of rectal cancer, breast cancer and lung cancer. (See Appendix 5). The excess of bladder cancer among painters was confirmed by a case control study of bladder cancer patients.

WHAT IS CAUSING THESE ILLNESSES?

Most of the diseases mentioned above are also found among industrial workers. The reason artists are developing the same occupational diseases as industrial workers is that they are often being exposed to the same chemicals—only they are often being exposed at home instead of in factories. Examples of hazardous chemicals commonly found in art and craft materials include lead, cadmium, asbestos, uranium, mercury, arsenic, silica, formaldehyde, toluene, benzene, hexane, sodium cyanide, and many more. The chart on the next page shows that hazardous art materials are found in a wide variety of art media. (See also Appendix 6)

WHO IS AT RISK?

Inquiries received at COH's Art Hazards Information Center clearly show that professional artists and craftspeople are not the only people at risk. We are finding illnesses from art materials also among art teachers and students, hobbyists and even children. Examples include: chemical pneumonia in a high school teacher unknowingly using cadmium-containing silver solders; leukemia in an art student working with benzene at a well known art school several years after attending that school; chlorine poisoning among several students and teachers using Dutch Mordant for etching; seizures (with no prior history) in a kindergarten student exposed to turpentine; and lead poisoning in a stained glass hobbyist.

Since most artists work at home, they can also be exposing other family members. In a study of New York and New Jersey artists in conjunction with the New Jersey State Health Department, we found that half of artists worked at home, and a quarter of them working in living areas such as kitchens, dining rooms, etc. This was even higher for women under 40 with children (See Appendix 7). As an example of what can happen, a couple doing stained glass in their kitchen had no problems, but their young child got lead poisoning. In addition, almost all of the calls we receive from Poison Control Centers involve young children having swallowed adult art materials, many of which have contained materials such as lead, solvents, etc.

HOW MANY PEOPLE ARE AT RISK?

According to the National Endowment for the Arts Research Division, there are over one million professional artists and craftspeople in the United States. In addition a 1975 Harris poll estimated that 39% of the population over the age of 16—representing 57 million people—do crafts, and 16%—representing 22 million people—do painting, drawing or sculpture. And, of course, every child uses art materials, whether in school, at home or in community art centers. (See Appendix 3 and references therein)

From the foregoing it is apparent that, including children, over 100 million people are at risk of exposure to hazardous art materials, and further, many of them are actually developing illnesses from these exposures.

2. These illnesses are occurring because of inadequate labeling of art materials.

My experience in visiting artists' studios, art schools, and public schools, in talking to thousands of artists and teachers and in reading artists' publications has indicated that most artists do not know the hazards of their art materials or how to work safely. This can result in their getting ill.

Some of the responsibility for this lack of knowledge lies with the art schools and public schools and the teachers in these schools. Since most of the art teachers themselves do not know the hazards of the art materials they use, they can not inform their students of the hazards and proper precautions.

Most of the responsibility for this lack of information on art hazards, however, lies with inadequate labeling of art hazards.

FEDERAL HAZARDOUS SUBSTANCES ACT

The Federal Hazardous Substances Act (FHSA) is the major federal law regulating labeling of consumer products, including art and craft materials. Unfortunately, the FHSA only regulates the acute hazards of art materials. This was based on the theory that consumers only have occasional exposure to consumer products and therefore they do not have to be concerned with long-term or chronic exposure. This, however, is not true for either professional artists or hobbyists, and in many instances even children. The major result of this is that most art materials have been only labeled for acute hazards and not chronic hazards.

Another result of this has been the misuse of the term "non-toxic", which is commonly found on children's art materials. According to Charles Jacobsen of the Division of Regulatory Management of the Consumer Product Safety Commission, an art material could be labeled "non-toxic" if it passed the acute toxicity tests of the FHSA. That is, if it does not cause death in more than 50% of a group of rats within two weeks at a certain dosage. Under this, asbestos could be labeled non-toxic. Thus art materials containing ingredients that could cause birth defects or miscarriages, cancer, nerve damage or other long term effects could be labeled non-toxic under the FHSA. This is clearly misleading.

VOLUNTARY STANDARDS

For over 40 years, the Arts and Crafts Materials Institute (formerly the Crayon, Watercolor and Craft Institute)—an industry trade association—has had a voluntary certification program for the safety of children's art materials. Art materials carrying their Certified Product (CP) or Approved Product (AP) seal of approval have been "certified by an authority of toxicology, associated with a leading university, to contain no materials in sufficient quantities to be toxic or injurious to the body, even if ingested."

The major problem with this voluntary standard for children's art materials is that many manufacturers of children's art materials do not participate. Further I have reviewed art supply lists for dozens of school districts, and found that most of them do not specify CP/AP approved art materials for elementary school classes. In fact most school districts were not even aware of the meaning of the CP/AP seal of approval. Therefore the CP/AP program of the Arts and Crafts Materials Institute is not providing sufficient protection for elementary school students.

In the early 1980's, as a result of concern and publicity about the chronic hazards of adult art materials, the American Society for Testing and Materials (ASTM) developed a voluntary standard on chronic hazard labeling of art materials, ASTM D-4236. This consensus standard establishes definitions for chronic hazards, suggests label wording and establishes criteria for a certification program for companies that wish to state that their labeling meets the requirements of ASTM D-4236.

The Arts and Crafts Materials Institute instituted such a program called the Health Labeling Certification. Products containing the HL seal of approval have had their labeling approved by a toxicologist. The ACMI claims that over 80% of art materials comply with this standard. However, they are only including a limited selection of art materials in their definition of art materials, mostly painting and drawing materials. The manufacturers of more toxic art supplies such as solvent-based silk screen materials, plastics resins, stained glass supplies, jewelry supplies, pottery supplies, etc. are not participating in this program. Therefore the voluntary standard is not covering a wide variety of hazardous arts and crafts supplies.

STATE LAWS

In the last couple of years, 5 states—California, Oregon, Tennessee, Illinois and Florida—have passed laws banning toxic art materials from elementary schools and requiring chronic hazard labeling on all other art materials. Several other states, including New York and Massachusetts, are considering similar laws.

At this date, only California has actually begun to implement this law. They are in the process of publishing a list of children's art materials that are non-toxic. This list relies primarily on the CP/AP and HL non-toxic certification of the Arts and Crafts Materials Institute. The other states have said that they do not have the resources to develop such a list on their own and are intending to rely primarily on California.

One major concern of industry about the state laws has been that it would be a financial burden on them to have to comply with a variety of state laws that vary from state to state.

3. Needs for federal legislation to ban toxic art supplies from elementary schools and to require chronic hazard labeling on all art materials.

As I have discussed, a number of factors are resulting in inadequate labeling of art materials: (1) the FHSA only requires acute hazard labeling, (2) voluntary standards are not being complied with by most manufacturers, and (3) only 5 states have passed laws about chronic hazards labeling.

All these factors, combined with the fact that artists, teachers, hobbyists and even children are getting ill from exposure to art materials, indicates the need for federal legislation which will mandate chronic hazard labeling of art materials and ban toxic art supplies from elementary schools.

Any federal legislation that is passed should address the following issues:

DEFINITION OF ART MATERIALS

It is crucial that the definition of art material be as broad as possible. To restrict the defintion to only materials intended for use as art materials would be very restrictive since many of the art materials used by artists are industrial chemicals which are not manufactured as art materials but are marketed or represented by the manufacturer or distributor as being suitable for use in making art.

MINIMUM CRITERIA FOR CHRONIC HAZARD LABELING

The proposed law adopts, with changes, ASTM standard D-4236-85 for chronic hazard labeling of art materials. The original standard provided that a toxicologist will develop the criteria for chronic hazard labeling as supervised by a three-person review board. I think it is in the public interest that minimum criteria for determining chronic hazard labeling be set by public authorities with appropriate opportunity for public comment, rather than by a variety of private corporations and trade associations. This would ensure that different companies using D-4236-85 have the same criteria for chronic hazard labeling.

In determining whether an art material causes adverse chronic health effects, the toxicologist should take into account the current literature as well as OSHA regulations, National Toxicology Program and the IARC monographs.

CHILDREN'S ART MATERIALS

With young children being the most susceptible to injury from toxic art supplies, it is important that special consideration be given to the problem of children's art materials so that parents, teachers, schools and other institutions can have reliable guidelines in purchasing safe children's art materials. In order to best protect children and still allow them to enjoy doing art, I believe that the Consumer Product Safety Commission should develop a list of approved, safe materials for use by children under the age of 12 (i.e. elementary school age children) since school districts and even most states do not have the capabilities to do this themselves. Any school or institution teaching art to young children should be required to only purchase art materials on this list. This list should not include art materials such as oil paints that, although by themselves might be safe, require hazardous solvents for clean-up.

MANUFACTURER'S ADDRESS AND TELEPHONE NUMBER

All art materials requiring chronic hazard labeling should have the name and address of the producer, repackager or importer of the art material. In addition there should be a telephone number listed where 24-hour information is available in case of accidental poisoning, for example of a child. At the Art Hazards Information Center, we constantly get telephone calls from Poison Control Centers where a child has ingested an adult art material and the company is no longer at the address listed, or there is no telephone number where the Poison Control Center can obtain information on the art material.

IMPORTED ART MATERIALS

Any federal legislation should clearly address the responsibility of importers of art materials to obtain adequate information on the art materials they import for sale in the United States. OSHA's Hazard Communication Rule requires importers to develop Material Safety Data Sheets on all hazardous imported chemicals. Therefore these importers should have the information necessary to place adequate chron-

ic hazard warnings on their art materials. Unfortunately, we receive many telephone calls from artists who have been unable to find out information about the hazards of imported art materials.

APPENDICES

1. Resume of Michael McCann, Ph.D., C.I.H.
2. Center for Occupational Hazards brochure.
3. "Health Hazards in the Arts and Crafts", by Michael McCann and Monona Rossol.
4. "Can Making Art Be Hazardous to your Health?", by Mary Lynn Kotz and Nick Kotz.
5. "Cancer Risk Among Artistic Painters", by Barry Miller, Debra Silverman, Robert Hoover, and Aaron Blair.
6. "Hazards in the Arts and Crafts", *Emergency Medicine*.
7. "Reproductive Hazards in the Arts and Crafts", By Michael McCann, Nancy Hall, Randi Klarnet and Perri Peltz.

STATEMENT OF DENNIS C. DIX, ON BEHALF OF OUTDOOR POWER EQUIPMENT INSTITUTE, INC.

Mr. Chairman and Members of the Consumer Subcommittee of the Senate Committee on Commerce, Science, and Transportation, I very much appreciate the opportunity to present this statement in connection with these hearings.

My name is Dennis C. Dix. I am the Executive Director of the Outdoor Power Equipment Institute, Inc. ("OPEI"). OPEI is a trade association of manufacturers of outdoor power equipment, including lawnmowers, garden tractors, leaf blowers, commercial turfcare machinery, logsplitters and snowblowers. OPEI was organized for the purpose of stimulating and advancing the general welfare of the outdoor power equipment industry and its consumers.

OPEI, its members and their customers, have a long history of involvement with the Consumer Product Safety Commission and are concerned about the structure and direction of the Agency. We believe that an efficient CPSC that has the trust of the consuming public and those it regulates is important to maintain a marketplace in which safe goods are sold. The outdoor power industry is one of the industries for which both CPSC and voluntary safety standards have been developed. The CPSC's mandatory safety standard for walk-behind power lawnmowers was promulgated nearly 10 years ago. The standard applies to power mowers with rigid or semi-ridig rotary blades as well as reel-type mowers. The standard prescribes safety requirements, including labeling and performance requirements, for walk-behind power mowers.

The industry has also worked closely with the CPSC to develop several voluntary standards, including standards for walk-behind and riding mowers, commercial turfcare equipment, snow throwers, shredders and grinders, edgers and trimmers, log splitters, and rotary tillers. OPEI has sponsored these voluntary standards through procedures of the American National Standards Institute ("ANSI"). The CPSC participated on the ANSI canvas list for these voluntary standards and submitted comments on several standards.

The partnership of the CPSC, the outdoor power equipment industry and the public, has helped to produce safe, high quality products for the American consumer. Nevertheless, organizational fractures within the CPSC have produced an agency which has a limited ability for decisive action and direction. This situation has resulted in a loss of confidence in the CPSC by both consumers and manufacturers and creates a climate of planning uncertainty for the manufacturing sector. OPEI has chosen to testify in these proceedings in the belief that a CPSC reorganization can result in restoring confidence, efficiency and accountability to the agency.

At the direction of Congress, the GAO has prepared a report on whether the organization structure of the CPSC could and should be changed. The GAO concluded that the CPSC could benefit from changing its current structure of five commissioners to one in which the Agency would be organized under a single administrator. OPEI supports this conclusion of the GAO and encourages this Subcommittee to consider implementing the recommendation. Although it is true that an agency headed by five commissioners may benefit from the diversity of those individuals, the CPSC does not function as a truly collegial body. As the GAO report indicates, CPSC votes are frequently unanimous. Moreover, two of the five commission seats have now been vacant for several months. The inability, or the refusal, of the Ad-

ministration to fill those vacant seats further undermines the credibility of the Agency. Without a unified voice, the Agency lacks accountability and leadership.

In addition, the single administrator proposal would streamline the Agency and provide a more efficient manner of conducting CPSC business. For example, the mandatory lawnmower standard was nearly a decade in the making. During this rulemaking process, OPEI and its members were required to expend substantial resources explaining the workings of complex machinery to each successive chairman, his staff and appointees, as well as each Commissioner and their staff. The high turnover in CPSC leadership resulted in needless duplication of effort and cost. As GAO reports, through 1986 the CPSC has had nine chairmen and an additional thirteen commissioners. Finally, the budgetary savings from CPSC commission salary and expenses would, as the GAO report explains, become available for other programmatic activities including research. For example, OPEI and its Riding Mower Working Group and currently involved closely with CPSC staff in conducting safety-related research will respect to the design of riding mowers. The extent of this research is obviously circumscribed to a degree by the constraints of CPSC's budget. We have no doubt that this project, as well as many others currently being conducted by CPSC, would benefit from the increased budget available through the elimination of four Commission offices. The GAO has estimated this budgetary saving to exceed $1 million annually.

It is based on our long experience working with the Agency, therefore, that we urge adoption of the single administrator proposal. On behalf of the OPEI and its members, I thank you once again for considering these comments.

Thank you.

STATEMENT OF INTERNATIONAL ASSOCIATION OF AMUSEMENT PARKS AND ATTRACTIONS

Mr. Chairman and members of the Subcommittee, we appreciate the opportunity to comment for the record on proposals by Senator Simon and former CPSC Commissioners Pittle and Statler that the Consumer Product Safety Commission's jurisdiction be enlarged to include fixed location amusement park rides.

In 1981, confronted with a situation in which several U.S. Courts had wrestled with and disagreed on how and whether the Consumer Product Safety Act applied to amusement rides, Congress excluded fixed location park rides from the Commission's jurisdiction.

The reasons why Congress, after public hearings and receipt of testimony, defined the Commission's jurisdiction to exclude such rides are even more cogent today than they were in 1981. Those reasons are:

1. The incidence of serious (defined as injuries requiring hospitalization) amusement ride injuries, as estimated by the CPSC, is extraordinarily low—almost the lowest of anything the Commission keeps track of.

2. Of the serious incidences that do occur, the great majority are unrelated to mechanical or design functioning, which is the area of the Commission's jurisdiction and expertise.

3. Amusement park rides are unlike other products the Commission regulates and do not lend themselves to the Commission's normal investigative or research procedures.

4. The industry is not, at present, unregulated or only self-regulated. Between 85% and 90% of park rides are presently regulated by state and/or local government, with the number of states regulating rides increasing each year.

5. For each of the above reasons, it would be an unwarranted and unwise waste of the Commission's resources to attempt effective regulation of these rides.

6. To the above, we would add a major concern, that because amusement park rides are not within the consumer's control and are maintained differently than are the products over which the Commission has jurisdiction, the application of Section 15(b) of the CPSA to amusement rides would create extraordinary, unintended, costly and potentially ruinous problems of compliance for ride operators and unmanageable problems of administration for the Commission.

For all of these reasons, we feel that if any federal role is necessary, it would more properly and effectively be found through legislation such as S.1032 introduced in the last Session, which you, Mr. Chairman, co-sponsored and which was adopted by the Senate last year as part of the CPSC Reauthorization Bill.

Allow us to expand somewhat on each of the above.

1. *The incidence of ride injuries.*—Amusement ride injuries and fatalities lend themselves to sensationalism, to the coinage of terms like "roller coaster roulette" and "mayhem on the midway". The fact is that CPSC estimates, based on its actual

injury reports, suggest that injuries serious enough to require overnight hospitalization occur at a rate of only about one in every 2½ to 3 million park visits. Fatalities occur at the rate of one in every 65 to 80 million visits.

In his statement, Senator Simon says that in 1984, "a dozen people died senselessly," implying that these were all ride related deaths. The truth is, as we have previously pointed out, most of those persons died in a tragic building fire which did not involve any amusement ride and would not have been under CPSC jurisdiction even if the Senator's Bill had been law at the time.

Of the some 200 products with respect to which CPSC makes injury estimates, rides are near the very bottom in terms of injuries produced, whether one is talking about raw numbers or percentages of people involved.

The Commission's estimates are not inconsistent with, but are somewhat higher, than figures based on actual surveys conducted by two separate independent university studies in recent years.

With respect to fatalities, we were recently informed by the National Transportation Safety Board that, based on past experience, one's chances of being involved in a fatal commercial airline crash are about one in five million. As noted above, CPSC ride fatality figures over the past 15 years put those odds at one in 65-80 million for rides.

2. *Injury Causation.*—Of the statistically small number of amusement ride injuries that do occur, most are unrelated to poor design or to mechanical difficulties. Again, the Commission's own studies show this to be true. In the most recent analysis of which we are aware, the CPSC said it could conclusively identify ride defects or failure in only 19% of the injury cases. Private studies put the figure at about the same level.

What this means is not just that the park themselves, supplemented by state and local inspections, do an exceptionally good job in assuring rider safety, but that the chances of the CPSC improving on that record are almost nil. Its concern is design and manufacturing defects and those are involved in relatively few ride injury cases.

3. *Rides do not lend themselves to the Commission's investigative or research procedures.*—Amusement park rides are quite unlike other products the Commission regulates. They are very large, highly complex and engineered, multi-million dollar pieces of equipment, as compared to the toasters, toys and other items the Commission might take in for inspection or examination. They are also unlike other large machines such as airplanes, in that the park ride, once in place, does not move about and is therefore more amenable to state or local regulation.

This means that the tests and the procedures for testing of rides are unlike those with which the Commission staff is familiar or uses regularly.

There is good reason to wonder whether the cost of developing and maintaining this expertise within the Commission can be justified given the dimensions of the problem.

4. *The level of state regulation.*—Proponents of jurisdiction express alarm that only about 30 states have laws regulating park rides. They ignore the fact that because of the way parks are clustered in tourist areas, those 30 states or municipalities within them, regulate nearly 90% of all the parks in the country.

The number of states with ride safety laws increases every year. This year California and Florida, which are two of the states with the most ride facilities in them, both have ride legislation under consideration. (It is worth noting, however, that a few years ago a California legislative research group studied the question of ride regulation for a year and concluded that the number of ride injuries in the state was so low they could not justify the expense of setting up a state program to regulate park rides).

5. *The issue of wise resource management within the Commission.*— Regular inspection of rides by trained personnel, such as is carried out by the parks on a daily basis, is the single most important preventative of those accidents which involve ride malfunction or failure, as opposed to those that result from human error or behavior. Yet no one on the commission, not even those urging jurisdiction, has proposed federal inspection of rides even on an annual basis. Indeed, former Commissioner Zagoria acknowledged publicly that it would be impractical, if not impossible, for the Commisson to inspect.

The second most important deterrent is adherence to approved standards for design, manufacture, operation and maintenance of rides. Such standards have been produced by the American Society of Testing Materials and have been endorsed by the Association.

This would leave post-accident investigations and Section 15(b) reporting requirements as the Commission's only tools. Post accident investigations are important

but the suggestion that federal investigations are necessary to assure accuracy and proper dissemination of information is patently without merit.

At present, accidents are investigated by the parks, by the insurance companies that insure them and, in most instances, by state or local investigators.

The insurance companies and governmental investigators have every reason to see that anyone else operating a similar piece of equipment is notified of any findings of defect or failure and such information is routinely shared through the industry's safety network.

The 15(b) reporting requirement will be discussed below. It can be said here, however, that even if Section 15(b) could be applied in a workable manner to rides, it would not likely affect the industry's safety record. A park finding a problem reportable under 15(b) would correct that problem to protect itself and its guests. As already mentioned, if it is a problem inherent in the equipment, that word will go out through the industry's safety network.

If one takes the time to really analyze just how the mechanisms of the CPSA, and particularly the "hybrid" variations proposed in recent legislation, would work in practice to reduce ride incidents, it is difficult to avoid the conclusion that the effect wouls be negligible.

Indeed, former Commissioner Saunda Armstrong presented to Congress a long, well documented and reasoned paper setting forth her opinion that there is nothing the CPSC could do that would significantly improve the safety record of the ride industry.

It would surely be prudent to at least seriously ponder Commissioner scanlon's concern that to assert a federal juridiction which cannot be effectively exercised would undermine the good efforts being made at the state level.

It comes down to a fundamental decision. Either the Commission should get involved in regulating the industry, including inspections and systematic investigation of any 15(b) reports or it should not. If it is to do so, it will take considerable resources which will not then be available for other Commission concerns.

6. *The Section 15(b) problem.*—From the above discussion it should be evident that our industry does not oppose jurisdiction because of any fear that federal inspections, either pre-or post-accident inspections, would impose impossible burdens on the industry. We agree with Ms. Armstrong, Mr. Scanlon, and others, that jurisdiction would be an ineffective remedy.

We do have a great fear, however, that the application of Section 15(b) to these rides will subject operators to an impossible reporting requirement and burden the Commission with reports it could not possibly handle appropriately.

This is a complex issue which can only be understood by looking closely at the language of 15(b) and trying to imagine how that requirement would have to be applied to an amusement ride which, unlike the other products under the Commission's jurisdiction, is being constantly maintained by trained personnel.

In the course of normal inspection of rides by park personnel, many things are found which could, if unattended, perhaps cause an injury of the type triggering the Section 15(b) reporting requirement. Would the park have to report these, even though they are corrected on the spot? The language does not clearly excuse them from reporting.

If they are all reported, so as to protect the park from the penalties imposed for non-reporting, what will the Commission do with all those reports? Investigate them all? Ignore them?

What is the legal position of a park operator who reports these findings when the Commission takes no action on them? Do they dare operate the ride?

These are not whimsical speculations. The problem is very real because of the nature of rides and the maintenance and operation of them by trained personnel. This problem has been acknowledged by Senator Simon and by those who drafted the Bill which passed the House in 1985. That Bill, and Senator Simon, attempted to get around the problem by exempting routine maintenance from the reporting requirement. That does not help, since no adequate definition of "routine" has been offered. No satisfactory solution--that is, one which accomplishes what the original drafters of 15(b) had in mind yet not put an unreasonable interpretive burden on the operator—could be agreed on after many hours of discussion.

Mr. Chairman, we plead with this committee to look beyond the emotional and sensational aspects of this question and seriously prove for the answer to just one question: Would extending jurisdiction to these park rides measurably increase the safety of the public?

That probing must include an analysis of what the effect will be on other Commission responsibilities of taking some of its very limited resources to try to regulate rides.

We sincerely believe the answer arrived at by Commissioners Armstrong and Scanlon is correct.

However, realizing that the Commission may not have the time or resources to make a thorough inquiry, we have supported in the past, and continue to support, the legislation which you co-sponsored last year which would allow for a thorough study of the issue.

Such a study is not an evasion or dodge. Given the public record on injury rates and the doubtful efficacy of regulation under the CPSA, there is no reason to believe the time devoted to the study will not be time well spent. As was suggested in connection with the Study Commission Bill last year, it could be provided that any accidents occurring during the period of the Commission's work would be investigated by a federal agency.

This study would focus on the state of present safety efforts—private and public, on whether federal intervention is necessary and, if so, what form that intervention should take.

Our industry would welcome such a study. It might point to ways in which the industry itself can improve on its own record. If so, we will be the better for it.

It is possible the Study Commission may decide a federal role is needed. If so, at least it will presumably define a role which is at once more effective and less potentially onerous than would be the CPSC's effort to apply the present law to rides.

No one has a greater stake in maintaining and improving upon an excellent safety record than do our members. If that requires a federal role we will be pleased to work with you to create an effective federal remedy.

Proponents of CPSC jurisdiction have announced a conclusion that such jurisdiction is necessary. They have not offered any reasoned analysis of how such jurisdiction will favorably affect the safety of the industry when there will be little or no federal inspection except after an accident, when the Commission is already pared to the bone in terms of its available resources and when reporting under Section 15(b) will vastly complicated things for both operators and the CPSC.

Your position and that adopted by this Committee and the Senate last year, is a much more responsible and promising approach. We encourage you to pursue it.

Thank you.

STATEMENT OF PAMELA GILBERT, U.S. PUBLIC INTEREST RESEARCH GROUP

My name is Pamela Gilbert. I am a staff attorney with the U.S. Public Interest Research Group (U.S. PIRG). Thank you for inviting U.S. PIRG to submit testimony to the subcommittee on the issue of chronic hazards in children's and adults' art and craft supplies.

U.S. PIRG is the national lobbying office for state PIRGs across the country. PIRGs are nonprofit, nonpartisan consumer advocacy organizations. During the past five years, U.S. PIRG and PIRGs in California, Massachusetts, New York and Oregon have conducted studies of the art supplies used in their local public schools. Each study came to the same conclusion: *schoolchildren were routinely using art materials such as rubber cements, permanent markers and clays and glazes which contain dangerously toxic substances.* In most instances, teachers were unaware of the potential long-term dangers of the art supplies because the products did not carry chronic hazard warning labels.

In 1984, as a result of the efforts of the California PIRG and other interested groups to uncover and publicize this problem, California passed the first state law in the country to require chronic hazard labeling of art and craft materials and to restrict the use of these products in schools. Since then, growing public awareness has led to the enactment of similar laws in Florida, Illinois, Oregon, Tennessee and Virginia, and labeling laws are currently pending in the New Jersey, Massachusetts and New York state legislatures.

HAZARDS OF ART AND CRAFT MATERIALS

It is undisputed that many commonly-used art and craft supplies contain substances that cause cancer and other chronic illnesses. For example:

Solvents contained in rubber cements, turpentine and permanent markers, and use in oil painting and silk-screening, have been associated with nervous system damage, internal organ damage, respiratory damage, skin disease and miscarriages.

Lead, found in paints, clays and glazes, can poison the renal and nervous systems, and cause anemia, sterility and birth defects. Lead solders contained in stained glass hobby kits have caused lead poisoning in hobbyists.

Asbestos, found in talc and clays, is linked to lung cancer, mesothelioma and asbestosis.

Cadmium-containing silver solders, used in jewelry-making, metal sculptures, silver brazing, soldering and welding, when inhaled or ingested can result in severe chronic lung and kidney damage, and acute, severe respiratory tract irritation, lung damage and even death.

In 1981, the National Cancer Institute (NCI) released the results of a study of death certificates of 1598 professional artists. The study found significantly elevated risks of arteriosclerotic heart disease, leukemia, and cancer of the bladder, colon, rectum, kidney and brain among white male artists. Among femal artists studied, excess numbers of deaths due to cancer of the rectum, lung and breast were noted.[1] Results from a case-control interview study by NCI of bladder cancer patients found further support for an association between bladder cancer and employment as an artistic painter.[2]

Other evidence compiled during the last decade by governmental and private groups has added considerably to the growing body of knowledge regarding the dangers associated with art and craft materials. In 1980, the Subcommittee on Consumer Protection and Finance in the U.S. House of Representatives held a series of hearings on legislation to require chronic hazard labeling for consumer products. Artists, physicians, toxicologists, artists' advocates and the Chair of the CPSC testified in favor of the legislation. Although that bill would have applied to all consumer products, the CPSC Chair singled out the problem of hazardous art and craft materials when she stated, "There are a number of carcinogens that we are studying and to which the bill would be applicable that are found in art materials * * * Artists are increasingly concerned about their exposure to toxic substances and, if aware of hazard, could take steps to reduce their exposure on the basis of full information."

At those hearings, a number of professional artists testified about injuries and debilitating diseases they suffered because of exposure to their art supplies. Examples of their testimony include: a potter, who worded with barium carbonate, clays with arsenic and leaded glazes, and died of leukemia; a stained glass hobbyist who developed lead poisoning; and a silk-screen artist who suffered from severe headaches and stomach aches and had two miscarriages. Her symptoms disappeared when she stopped silk-screening.

Since these hearings, many other examples of illness and tragedy resulting from the use of art products have come to light. These include:

Jon Glowacki, who died suddenly on February 20, 1985 when he was 13 years old. Jon spent much of his free time engaging in art and craft activities and had been at home along using Ross' rubber cement. A sample of the glue accompanied his body to the medical examiner's office. The medical examiner listed his cause of death as "sudden death associated with inhalation of volatile hydrocarbons."

Ross' rubber cement contains n-hexane, an aliphatic hydrocarbon, which has been associated with heart arrhythmia (heartbeat irregularity) and poly neuropathy, a progressive disorder of the nervous system causing motor paralysis and a deficiency of the respiratory muscles.

Judith Sinclair, who worked as a commercial artist and graphic designer for almost 20 years. From December, 1979 through October, 1982, Ms. Sinclair worked as a creative coordinator of a public affairs communications department, which involved constant exposure to permanent markers, acetates, glues, rubber cements, paints, inks and a cleaning agent and solvent called Bestine, which contains 30-35% n-hexane.

Beginning in fall, 1980, Ms. Sinclair suffered from exhaustion, dizziness, headaches, nausea, swollen glands, chest and stomach pains, muscle cramps, blurred vision, dehydration, severe dry skin, and loss of coordination. She spent two years consulting various doctors and specialist before recognizing that there was a connection between the chemicals in her art products and her illness. Soon after, she left her job on the advice of her physician.

Ms. Sinclair has been diagnosed with poly neuropathy due to the chemicals in her art supplies. She has not fully recovered from her illness and she suffers severe recurrences of her symptoms upon exposure to even small amounts of the chemicals with which she once worked. After a lifetime of training and work as an artist, Ms. Sinclair is permanently disabled and can no longer work in the art field.

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[1] "Mortality Patterns Among Professional Artists: A Preliminary Report," Barry A. Miller, Aaron Blair, and Michael McCann, National Cancer Institute (1985).

[2] "Cancer Risk Among Artistic Painters," Barry A. Miller, Debra Silverman, Robert N. Hoover and Aaron Blair, American Journal of Industrial Medicine 9:281-287 (1986).

Tadzu Lapinski is a graphic artist who teaches at the University of Maryland. In 1976, as a result of using pure benzene in his art work, Prof. Lapinski developed acute aplastic anemia and spent one year in the hospital, at times close to death. Prior to his illness, Prof. Lapinski was completely unaware of the dangers associates with long-term exposure benzene.

G. Kaye Holden was a full time professional artist from 1962 to 1975. Virtually every day, he worked with oil paints, turpentines and mineral spirits used in thinning paint and cleaning brushes.

In 1975, Mr. Holden developed a potentially fatal kidney disease which required surgery, constant monitoring and the loss of 60% of his kidney functions. Since his doctor did not realize there was a connection between his art materials and his illness, Mr. Holden continued to work when he was not in the hospital. He worked until 1977 while his condition rapidly deteriorated. In 1977, he had to go on a kidney dialysis machine, and ultimately had a kidney transplant.

In July 1977, Mr. Holden read an article by Dr. Theodore Ehrenrich, which reported on a relationship between artists working with oil paints and paint thinners and kidney disease. Dr. Ehrenrich wrote that repeated "small insults" to the kidney over a long period of time set off the body's immune system so that the kidneys were ultimately destroyed by the body itself. This was exactly what had happened to Mr. Holden. Unfortunately, Mr. Holden became aware of the relationship between his work and his illness when it was too late to reverse the disease.

Audrey Eichelmann died in 1981 of mesothelioma, a cancer that is nearly always caused by exposure to asbestos. It is believed that Ms. Eichelmann was exposed to abestos while working with clay mixed with talc that was contaminated with asbestos.

MILLIONS AT RISK

The health of millions of Americans is threatened by the presence of hazardous substances contained in art and craft products. A Harris poll from November, 1984 found that 50 million Americans paint or draw as a hobby, 29 million make pottery or ceramics and 15 million sculpt or work with clay. In addition, the National Endowment for the Arts Research Division estimates that there are over one million professional artists and craftspeople in the United States.

CHILDREN AT RISK

Public Interest Research Groups in California, Massachusetts, New York, Oregon and the District of Columbia have conducted studies of the art and craft supplies being used in the public schools in their areas. The studies found that children routinely use art materials such as rubber cements, permanent markers and clays and glazes which contain many of the same toxic substances that have been documented to cause chronic illnesses in adults. In most instances, teachers and school officials were unaware that these products posed dangers and were eager to rid the schools of inappropriate supplies as soon as they were informed of the hazards in the products.

The PIRG findings are particularly troubling because, when compared to adults, children are at a higher risk of developing diseases from exposure to hazardous substances. First, exposure by a child to the same amount of a substance as an adult experiences will result in a greater concentration of that substance in the child's body. This phenomenon is illustrated best with an analogy familiar to everybody—a child who drinks an alcoholic beverage will be affected much more than an adult who consumes the same amount of alcohol.

Second, children's body systems are still developing, so that damage to vital immune mechanisms can lower future resistance to infection and disease. Children's developing nervous systems and brains are particularly sensitive to damage from substances that cause or contribute to chronic harm, where effects may not be immediately apparent.[3]

Third, children's high metabolic rate results in a greater tendency to absorb toxic chemicals into their body systems. Finally, children often do not follow directions properly and they tend to misuse products by, for example, inappropriately putting things in their mouths.

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[3] "Proceedings of the SOEH Conference on Health Hazards in the Arts and Crafts," Society for Occupational and Environmental Health, editors: Michael McCann and Gail Barazini, p.146 (1980).

For all of these reasons, regulations are needed to protect children from exposure to toxic substances contained in art and craft supplies. Five states—California, Florida, Illinois, Oregon and Tennessee—have passed laws which require chronic hazard labeling of art and craft materials and restrict the use of these products in public schools.

School systems that have become aware of the danagers of many art supplies have voluntarily removed known toxic products from their classrooms. In almost every case, safer substitutes were found for the hazardous products that were being used. School officials across the country have consistently demonstrated a willingness to use only non-hazardous art materials with elementary schoolchildren, and to use toxic materials in secondary schools only under proper conditions.

However, in order to carry out a program of safe purchase and use of art products, school officials need to know two things: (1) which art products are too hazardous for young children; and (2) how teachers and older children can use hazardous products safely.

Unfortunately, without legislative action requiring comprehensive labeling and easy indentification of hazardous products, school systems do not have the expertise to establish effective art materials safety programs.

FEDERAL REGULATION OF HAZARDOUS PRODUCTS

The workplace

The use of chronically-hazardous substances in the workplace is subject to federal regulations that are enforced by the Occupational Safety and Health Administration (OSHA). For hundreds of hazardous chemicals and products, OSHA rules establish maximum levels of exposure for employees who work with those products. In addition, under the OSHA Hazard Communication Rule, most employers must provide information to their employees concerning hazardous chemicals through hazard communication programs which include labeling, material safety data sheets, training and access to written records.

Since consumers of art supplies primarily use art products in their homes or in classrooms, they are not protected by these OSHA regulations. This is true even through many of the hazardous substances that are regulated when used in the workplace are also found in art and craft products. These substances include lead, asbestos, solvents such as benzene, toluene and hexane, mineral compounds such as cadmium and barium compounds, and preservatives such as formaldehyde.

Furthermore, artists are often exposed to toxic substances at levels *higher* than the government allows for industrial workers. First, artists often work and live in the same place so that they are exposed to their art materials for more hours than are workers in a typical employment setting. Second, because of their unusual working conditions, artists often eat while doing their art work, causing them to accidentally ingest hazardous materials. Finally, artists who are self-employed or are hobbyists usually do not work in areas that are well-ventilated as industrial workplaces.

CONSUMER PRODUCTS

As consumer products, most art and craft materials are subject to the labeling requirements of the Federal Hazardous Substances Act (FHSA), which is administered by the Consumer Product Safety Commission (CPSC). The FHSA requires warning labels on consumer products which are: toxic, corrosive, irritants, strong sensitizers, flammable or combustible, or that generate pressure through decomposition, heat or other means. The Act states that the term "toxic" applies to any substance "which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." Although this definition appears to include both "acute" toxicity (which causes immediate adverse effects) and "chronic" toxicity (whose adverse effects are not apparent for a period of time after exposure), the CPSC has not adequately exercised its authority to protect consumers from unknowing exposure to chronically toxic materials.

Labeling requirements under the FHSA work in the following way: "Once a product achieves the status of being a hazardous substance, which is generally accomplished not be rulemaking but by the fact that it meets the appropriate definition, the Act provides that it be labeled in a manner prescribed by the Act to help insure safe use and inform the user of appropriate first aid treatment. Products whose status as a hazardous substance is borderline or uncertain when the statutory definitions are applied may be declared hazardous substances by regulation." (Reprinted from a February 18, 1977 memorandum by the Office of General Counsel of the

CPSC entitled "Consolidation of the Acts Administered by the CPSC in an Amended Consumer Product Safety Act." *See*, Chronic Hazard Labeling Legislation, House Hearings, September, 1980, page 33.)

FHSA regulations define a toxic substance as one that produces death within 14 days in at least half of a group of white rats who have been exposed to a certain amount of the substance through ingestion or inhalation, or in at least half of a group of rabbits whose skin has been exposed to a certain amount of the substance. (16 CFR 1500.3(c)(2)). This definition describes a test for *acute* toxicity, and would not trigger a warning label for a product that poses a chronic hazard but does not produce death in animals within a short period of time.

FHSA regulations also state that "Toxic' also applies to any substance that is 'toxic' on the basis of human experience." A finding by the CPSC that a substance is toxic because it poses a chronic hazard must be made pursuant to this part of the definition of the term toxic. Since this definition does not specify the test for "toxicity based on human experience," findings of chronic toxicity that are made this definition must be done by regulation. In order for the FHSA's *automatic* labeling requirements to apply to chronically toxic substances, without the need for separate rulemakings for each substance, the CPSC would have to establish regulations which specify the tests and criteria manufacturer must use to determine if their product pose chronic hazards.

The CPSC has never conducted a regulatory proceeding to determine whether a specific art and craft material should be labeled or banned because it poses chronic hazards, nor has the CPSC initiated proceedings to establish tests and criteria for chronic toxicity. The Commission has, however, made hazards determinations for specific substances which may be contained in art products. For example, the CPSC has determined through rulemaking that the following substances are hazardous based on human experience, and therefore, the Commission requires hazards warning labels on products which contain a specified amount of these substances. Many of these substances are often found in art materials: (1) diethylene glycol; (2) ethylene glycol; (3) benzene, toluene, xylene, or petroleum distillates such as kerosene, mineral seal oil, naphtha, gasoline, mineral spirits, stoddard solvent and related petroleum distillates; (4) methyl alcohol; and (5) turpentine.

In addition, the CPSC has issued regulations under the Consumer Product Safety Act and the FHSA to regulate and ban certain consumer products which contain lead and asbestos—two of the most hazardous substances that are found in art and craft materials. The lead regulations, however, specifically exclude from their scope "artists' paints and related materials." Likewise, the CPSC's labeling regulations for asbestos apply only to products to which asbestos has been intentionally added. This means that the regulations do not apply to clays and tales which contain naturally occurring asbestos and are used as art materials by artists, hobbyists and childrens.

The CPSC also has initiated a rulemaking to determine whether methylene chloride, which is contained in some paint strippers and spray paints, is a hazardous substance under the FHSA. Although this issue was brought to the attention of the CPSC in September, 1984, the current proceeding was not began until August, 1986. The staff of the Commission is currently assessing the public comments and conducting risk assessment for each product that would be affected. Their decision is due to be submitted to the Commissioners in June of this year, but no date has been set for a final Commission determination.

As the foregoing makes clear, although the CPSC has the authority to regulate art and craft products that pose chronic hazards, they must accomplish this either through separate rulemaking proceedings or by establishing tests and criteria for chronic toxicity. To date, the Commission has chosen to initiate and complete rulemaking proceedings for only a small handful of the hundreds of hazardous substances that are contained in art materials.

Furthermore, even where the CPSC has acted to reguire labeling of a chronically hazardous substance under the FHSA, the labels that are required do not adequately convey to the user the dangers associated with the substance. For example, benzene is a cancer agent, which has been linked to bone marrow damage and blood dyscrasias. Under FHSA regulations, a product which contains 5 percent or more by weight of benzene must be labeled with the following:

DANGER: Vapor harmful. Poision. (Picture of skull and crossbones)
CONTAINS: Benzene.
KEEP OUT OF THE REACH OF CHILDREN.

This language does not inform consumers of the long-term hazards, such as cancer, that may result from exposure to the product, nor does it include instructions on how to use the product safety. In light of the extreme potential dangers of

benzene, this label is wholly inadequate as a health warning for consumers, artists and children.

Under the comprehensive scheme for labeling chronically-hazardous art materials that we propose, a product which contains 5 percent or more by weight of benzene would be labeled with the following:

Warning: Cancer Agent! Exposure may produce cancer. May be harmful if swallowed, by skin contact or by breathing vapors. Exposure may cause bone marrow damage. Contains: benzene

Use NIOSH-certified respirator with an organic vapor cartridge or use in fully enclosed local exhausting hood. Wear vinyl or latex gloves and coveralls. Do not eat, drink or smoke while using. Wash hands immediately after use.

KEEP OUT OF REACH OF CHILDREN.

For further health information contact your poison control center.

VOLUNTARY STANDARD

At the conclusion of the 1980 hearings on chronic hazards of art supplies, Rep. Fred Richmond, the sponsor of the legislation, issued the following directive to the art and craft materials industry:

"We are not adequately potecting the health and well-being of artists in the United States. There are 54 million people involved in the arts in the United States. There are a lot of consumers. So, we all agree something has to be done. Let's start working together. As Chairman Scheuer said, let's work informally to see if we can develop material directed to the consumer, not to industry, but to the consumer, legible, simple material that will tell the consumers, the 54 million consumers, exactly what Chairman Scheuer said: What is in this product, what should be avoided, how it should be used, and what to do if it is ingested, inhaled or absorbed."

That statement began a process in which art material manufacturers, artists, government officials and scientists, under the guidance of the American Society for Testing and Materials (ASTM), developed a voluntary consensus standard for the labeling of chronically toxic ingredients in art supplies. ASTM adopted this standard, number D-4236, in March, 1983. Labels began appearing on art and craft products in 1985.

The voluntary standard works in the following way:

Art and craft material manufacturers submit their products for evaluation by a certified toxicologist. The toxicologist evaluates the products to determine if they have the potential for producing chronic adverse health effects under customary or reasonably foreseeable use.

The standard establishes responsibilities for participating manufacturers which include: submitting product formulations to a toxicologist for review; adopting precautionary labeling suggested by the toxicologist and in accordance with statements listed in the standard; supplying a poison control center with formulation information; and having their products and labels reviewed periodically to ensure they conform with the most current scientific knowledge.

The standard also establishes considerations that toxicologists must take into account when determining whether an art material has the potential for producing chronic adverse health effects. These include; current chemical composition of the art material; current generally accepted, well-established scientific knowledge; physical and chemical form of the product, bioavailability, concentration and amount of toxic components; reasonably foreseeable uses; potential for synergism and antagonism of components; potential adverse health effects of decomposition or combustion; and opinions of various regulatory agencies and scientific bodies.

Under the voluntary standard, art materials that pose chronic hazards must carry labels which contain:

(i) a signal word, such as "WARNING";

(ii) statement(s) regarding potentially chronic hazards, such as "CANCER AGENT! EXPOSURE MAY PRODUCE CANCER";

(iii) a list of chronically hazardous components;

(iv) statement(s) regarding safe use, such as "Avoid inhalation/ingestion/skin contact", or "Use NIOSH-certified mask for dusts/mists/fumes";

(v) a statement identifying a source for additional health information, such as "Call your local poison control center for more information"; and

(vi) a statement of conformance that states "Conforms to ASTM D-4236."

PROBLEMS WITH THE VOLUNTARY STANDARD

Industry participation in the voluntary labeling program has been estimated as follows:

Fine arts and ceramics: 85–90%
Crafts: "most of the major manufacturers" Silk-screening: 50%
As for other art activities, such as jewelry-making and the creation of stained-glass windows, no approximation of industry compliance is available.

These estimates illustrate the problem with voluntary standards—they are voluntary, and therefore, companies who do not want to participate do not have to. Unfortunately, many of the non-participating companies produce products for the most hazardous activities, such as silk-screening and jewelry-making. Since the standard is designed to protect the health and safety of a large segment of the public, this situation is unacceptable.

In addition, when some companies label their products and some companies do not, added dangers are presented to consumers. For example, a consumer will be more likely to purchase a product that does not contain a warning of a cancer hazard than a product with such a warning, thinking that the absence of a warning signifies no potential danger. However, under a voluntary program, a product without a label may be as hazardous or *more* hazardous than a product with a label. Furthermore, since the program is voluntary, there is no official agency that is responsible for monitoring or enforcing compliance, and in fact, no such monitoring or enforcement is currently taking place.

Finally, the ASTM program raises concerns because the standard does not specify tests or criteria for determining whether a substance or product presents chronic health hazards. Therefore, one toxicologist may conclude that a certain product is not hazardous while another toxicologist will come up with a different conclusion, because the second toxicologist used different criteria to measure the hazard. For example, experts differ on the safe level of solubility for lead. An effective rule must include a mechanism for developing minimum criteria that the product must meet.

LEGISLATIVE PROPOSAL

The problem of chronicaly-hazardous has been well-documented by state and federal policymakers, artists and their physicians, consumer groups, art product manufacturers and scientific studies. There is no federal law which requires adequate labeling on art products which are used outside of the workplace and which can cause chronic illnesses, although the FHSA gives the CPCS the authority to establish such requirements.

Due to this gap in federal regulations, a voluntary standard for the labeling of chronic hazards in art supplies has been established. However, many art material manufacturers do not comply with this standard. What is more, the standard is incomplete because it does not specify the criteria for determining whether a substance or product presents chronic health hazards. Therefore, U.S. PIRG joins with art material manufacturers, artists, consumers, parents, eductors and health organizations in supporting national legislation to require comprehensive labels on chronically-hazardous art and craft materials, and the development and distribution of a list of products that are inappropriate for use by children in elementary schools.

Specifically, U.S. PIRG strongly urges this subcommittee to amend the FHSA to:
(1) Adopt ASTM standard D–4236, with some changes as a regulation under the FHSA.

(2) Require the CPSC to issue regulations which would specify the minimum criteria to be used by toxicologists to determine the chronic hazards of art materials. The CPSC should periodically review and revise these criteria to ensure they reflect changes in scientific knowledge and in the formulations of art materials.

(3) Require the CPSC to develop a list of art materials for distribution to schools and other institutions in which children work with art supplies, which would identify which products are inappropriate for elementary-school age children to use. We would also support sanctions for anyone who *knowingly* purchases or sells, for use by elementary schoolchildren, an art product which has been identified by the government as inappropriate for use by such children.

This proposed legislation would provide significant and important benefits to most interested groups:

The health and well-being of professional artists, hobbyists, teachers, children and other consumers of art products would benefit greatly from information, printed directly on product labels, of potential hazards and how to avoid them;

Art and craft manufacturers would benefit from the development and enforcement of uniform labeling requirements and hazard determination criteria which would apply nationwide. Such uniform, mandatory labeling requirements would put an end to the market advantage that manufacturers who do not adequately label

their products gain over manufacturers who engage in responsible labeling practices.

Parents and school officials would benefit from the identification of art and craft materials that are inappropriate for elementary schoolchildren.

The only groups that would lose under this proposal are those intransigent manufacturers who do not participate in the voluntary labeling program and who are not complying with the various state labeling laws. U.S. PIRG believes it is high time that these companies acted as responsibly as their competitors and warned their customers of the hazards associated with their products.

Under this proposed legislative scheme, the CPSC would be required to take on added responsibilities. However, the increased burden on the resources of the Commission would be greatly outweighted by the benefits to the public interest that would result from this law.

CONCLUSION

Up to 100 million Americans, including children, are threatened by hazards in art and craft materials. A federal law is needed to protect the health and safety of these art product users. Just like existing federal labeling laws for consumer products, the legislation that we propose is self-enforcing. That is, once the criteria for determining chronic hazards in art products have been developed, art and craft material manufacturers would be responsible for testing their own products and determining the appropriate labels. Furthermore, for most art and craft manufacturers, this would not be an added responsibility since they already engage in chronic hazard labeling under a voluntary program. Therefore, this national labeling law would provide a maximum benefit to the public interest with a minimum of extra effort on behalf of manufacturers and government regulators. The time is long overdue for the federal government to act to protect artists and other consumers from the uninformed use of hazardous and deadly art products. We urge the subcommittee to act quickly to enact a chronic hazard labeling law for art and craft materials.

Statement of National Artists Equity Association

National Artists Equity Association strongly supports the reauthorization of the United States Consumer Product Safety Commission (CPSC) with an increase in funding to enable CPSC to adequately address the serious problems of health hazards to the consumer. There are many circumstances where consumers, including children, are not protected under the Occupational Safety and Health Administration (OSHA) or the Environmental Protection Agency (EPA). These agencies approach health hazards from a viewpoint which does not take into account the many types of exposure that the average citizen encounters or the special requirements of warning labels addressed to that citizen. Warnings and safe-handling instructions that are intended to address conditions in the workplace often cannot be understoods or applied by the general public.

Artists Equity is a national organization of profesional visual artists and has been addressing the needs of artists for 40 years. Artists usually work alone in a studio or at home and therefore their problems of exposure to health hazards are not addressed by OSHA. Since 1977, National Artists Equity has been working to get art and craft supplies labeling that would alert users to any chronic as well as acute health hazards. National Artists Equity is presenting testimony on the basis of its experience with this issue over the past ten years and its role as the national association representing all American visual artists. To a large extent, National Artists Equity has been successful in its labeling efforts due to the cooperation of the art material manufacturers themselves; however, it has become increasingly apparent that the only place where adequate oversight of labeling art materials for chronic toxicity can be performed is at the CPSC.

National Artists Equity is a part of a coalition of consumers, health professionals, and art materials manufacturers that had help and advice from the CPSC staff in developing, under the auspices of the American Society for Testing and Materials (ASTM), a unique national voluntary consensus standard on chronic health hazards labeling of art materials (ASTM Standard ±D4236). But there have been insufficient funds for the CPSC to take the lead in establishing guidelines for chronic health hazards evaluation of consumer products or in establising nationwide uniform warnings and safe-handling instructions. Acute hazards had to receive priority attention. Nonetheless, the general public, including children, is handling at home and at school products that are known to present chronic health hazards. This is true not only for art materials but for many other products commonly used.

There must be a uniform way to warn consumers of these hazards, just as they are warned of acute hazards. In the past, such warnings of chronic hazards has been difficult because testing for acute hazards is simpler and less expensive than establishing which substances, and in what forms and in what amounts, pose chronic hazards. Current knowledge of specific chronic hazards is sufficient to warrant warning labels for many substances as part of a program flexible enough to accommodate advancing knowledge.

Conformance to national consensus standard D4236 by the art materials industry has been very good. And five states (California, Illinois, Oregon, Tennessee, and Florida) have included D4236 in their laws mandating health labeling on art materials. It would seem then that, through cooperative effort, the problem has been solved; however, as is inevitable, the state laws, are not identical. Even though D4236 is included in the laws, there are other sections that vary from state to state. One state, Virginia, has recently signed into a law a bill that does *not* include D4236. (This happened because neither National Artists Equity nor any of the other coalition members were aware of the pending legislation and therefore did not have the opportunity to explain the advantages of including the standard). Art supplies labeling bills are pending in at last three other states, and there remains the problem of lack of uniformity among them. Thus, manufacturers are confused about what is required in terms of laberling and schools are confused about what can be purchased for children's use. Six state health departments are struggling with trying to compile lists of safe or unsafe art materials. Considering the difficulty in evaluating products for chronic health hazards, there is every reason to believe that these lists will not be identical.

From the consumer's viewpoint, the situation is intolerable. In order to be understood by the public, warning labels must be uniform. Yet, because art and craft materials typically come in sufficient information on the label. Slight changes in wording can completely confuse the consumer. Warning and safe-handling phrases must be uniform and nationally publicized in order to be meaningful. The necessity to label differently for different states will drive prices of art materials up tremendously and force many products out of the marketplace. Artists, who already spend from one-half to three-quarters of their art-related income on their art supplies, cannot afford these additional costs. Schools need national guidance on the purchase of safe art products as well as the ability to purchase these art products at reasonable prices so that art is kept in the curriculum.

Current toxicological testing shows that the majority of art and craft materials are completely harmless. It would be tragic if confusion over labeling of the new products needing chronic toxicity warnings is allowed to cripple the art materials industry, to eliminate art and craft education in schools, and to penalize professional artists, whose careers depend on access to these supplies.

National Artists Equity believes, and the CPSC staff advisory opinion ±309 states, that art materials fall under the jurisdiction of the CPSC; that CPSC has the mandate to deal with chronic health hazards in consumer products; and that D4236 meets CPSC's requirements for chronic health hazards labeling. What is needed now are (1) assurance that the requirements of D4236 are nationally applied and (2) a set of national guidelines to insure that toxicologists applying those requirements are using the same criteria. But, if CPSC cannot do these two things under the Federal Hazardous Substances Act, then further legislation is needed.

This problem is just the beginning of a flood of similar problems that consumers and producers of other consumer products will have to deal with in the immediate future. Now is the time to put into place the mechanism to address these problems before the confusion and expenses move through the American economy. The course that National Artists Equity and the other members of the art supplies labeling coalition have followed in developing a consensus standard is inexpensive. Advice was sought from CPSC, and the costs are borne almost entirely by industry. The consensus process allows for continuing public input and is flexible enough to adjust to developing knowledge. Guidelines from CPSC on toxicological criteria will give small companies, which are worried about liability, the guidance they need to uniformly label products that qualified toxicologists, using current scientific information, believe should have warning labels. The application of those guidelines to individual products will be in the hands of qualified private-sector toxicologists, relieving the government of the burden of dealing with tens of thousands of product labels.

THE NATIONAL PTA,
Chicago, ILL, May 22, 1987.

Hon. ALBERT GORE, Jr.,
Chairman, Senate Committee on Commerce, Science and Transportation, Senate Russell Building, Washington, DC.

DEAR SENATOR GORE: The National PTA, representing over 6.1 million parents, teachers and concerned citizens around the nation supports long-awaited congressional action related to the labeling of toxic art supplies. As a general policy, the National PTA supports regulation of the manufacture, advertising, or sales of products hazardous to children and youth. More specifically, the National PTA delegate assembly passed a resolution at its 1984 National convention "seeking and supporting legislation to mandate the labeling of ingredients on art and craft products and precautions for safe use."

Whether via a free standing bill or the reauthorization process of the Consumer Products Safety Commission, the National PTA would support the amending the Federal Hazardous Substances Act to:

1. Require manufacturers of art and craft materials to put comprehensive labels on chronically hazardous art products, and;

2. Require the Consumer Product Safety Commission to develop a list of products which do not pose any acute or chronic hazards for distribution to schools and other institutions that serve children.

It would be a violation of the Act to knowingly purchase for use by children under 12 an art material that is not contained in that list.

The labels would contain: the signal word "WARNING"; a list of chronically hazardous components; a statement of potential hazards; a statement regarding safe use of the product; and a statement identifying a source for additional health information.

In addition, there would be a provision for a uniform labeling symbol, to be placed on products appropriate for use by children, which would designate that the product has not been found to pose any acute or chronic hazards.

A voluntary standard, approved by consensus by the American Society for Testing and Materials (ASTM), is already in existance. Under the voluntary standard, art and craft material manufacturers submit their products for evaluation by a certified toxologist. The toxologist evaluates the products to determine if they have the potential for producing chronic adverse health effects under customary or reasonably forseeable use. But since the standard is voluntary, many art and craft manufacturers do not comply with it.

Art supply labeling laws have been passed in California, Florida, Illinois, Oregon, Tennessee, and Virginia, and similar legislation has been introduced in Massachusetts and New York. The laws provide for comprehensive labeling on all art and craft supplies that cause chronic illness. It is reasonable to suggest, however, that beyond these states, little other state action related to labeling is foreseeable. A national problem requires national action.

The problem with toxic art supply use is easy to define. Many commonly-used art and craft products contain substances which are known to cause cancer and other chronic illnesses. Studies conducted by Public Interest Research Groups have found that children are at a higher risk of developing diseases from exposure to hazardous substances because:

1. Their body size is smaller, therefore, exposure to the same amount of a substance as an adult experiences will result in higher concentrations of the substance in the child's body;

2. They have a higher metabolic rate and their body systems are still developing, therefore, they absorb toxic chemicals more quickly;

3. They often misuse products and do not follow directions properly;

Labeling is fair; it alerts the consumer of products to a danger without being punitive; and it provides an incentive to manufacturers who care about children to produce safer art supplies. The National PTA urges this Committee and the Congress to take immediate action.

Sincerely,

MILLIE WATERMAN,
Vice President for Legislative Activity.

NATIONAL SCHOOL BOARDS ASSOCIATION,
Alexandria, VA, May 22, 1987.

Hon. ALBERT GORE, Jr.,
Chairman, Consumer Subcommittee, U.S. Senate, Washington, DC.

DEAR SENATOR GORE: The National School Boards Association represents the 95,000 local school board members who are the policy makers in the 15,000 local public school districts throughout the United States. It is our understanding that your subcommittee is considering legislation that would (1) require chronic hazard labeling of art and craft products; (2) direct the Consumer Product Safety Commission to develop and promulgate a list of safe products; and (3) require schools to purchase and use—and suppliers to supply—only those products on the approved list.

NSBA cannot support the requirement that schools purchase and use only those products on a federally-approved list. We believe that proper labeling, along with promulgation of a list of approved products, assures the safety of children in the schools. The additional burden of federal sanctions against school districts is unnecessary. In addition, it would, on a day-to-day basis, be impractical for a local district to monitor purchase of such products, particularly those incidental purchases made by individual teachers.

NSBA does not oppose the concept of appropriate labeling of hazardous products. We also do not oppose the preparation and dissemination by the Consumer Products Safety Commission of a list of safe art and craft products. Local school boards are extremely interested in the health and safety of their students and would welcome information that would help them maintain a healthy environment for their students.

Sincerely,

EDWARD R. KEALY,
Director, Federal Programs.

PETTIT & MARTIN,
ATTORNEYS AT LAW,
Washington, DC, May 27, 1987.

Hon. ALBERT GORE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GORE: In connectionm with the May 13 CPSC reauthorization hearings of the Senate Consumer Subcommittee, we are submitting two documents [1] which U.S. Suzuki Motor Corporation ("Suzuki") recently submitted to the Consumer Product Safety Commission regarding ATVs intended for use by children under 12 years of age. Although your hearings covered a range of ATV-related issues, these documents pertain specifically to the question of accidents involving children under 12 as this was understandably one of the more salient issues discussed in your hearings and has been a major focus of the CPSC's actions and publicity emanating from those actions.

The first document attached hereto is Suzuki's response to Chairman Scanlon's February 18, 1987 letter (also enclosed) requesting that Suzuki cease marketing its ATV intended for children under 12. (Commissioner Dawson dissented from the motion authorizing that request.) Suzuki's response details the reasons why Suzuki (the largest distributor of ATVs intended for use by children under 12) cannot accede to Chairman Scanlon's request, principally because of the outstanding safety record of Suzuki's 50cc ATVs which are marketed and age-labeled for children six and older. These very small, slow-speed ATVs are designed specifically for young riders and have compiled an exemplary safety record, as the CPSC's data and staff reports indicate.

The second document is Suzuki's comment on the CPSC's updated ATV Consumer Product Safety Alert, which continues to foster the inaccurate and misleading impression that substantial numbers of children under 12 are being killed or injured on ATVs intended for use by such children, when in fact the CPSC's own data show that over 96 percent of injuries to children under 12 have involved children operating larger ATVs not intended for their use or children riding as passengers, a practice Suzuki and the other ATV distributors expressly warn against. Additionally, of the 644 fatilities reported by the CPSC in its December 29, 1986 fatality report, only one involved a child under 12 operating an ATV designed for children under 12, and that fatility resulted from an automobile striking the ATV on a roadway.

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[1] The documents are in the Committee files.

Unfortunately, the widespread publicity generated by the CPSC and the media regarding ATV-related children's injuries has obscured the excellent safety record compiled on child-sized, 50–60cc ATVs. Moreover, the misleading impression that all ATVs pose hazards to young children has also tended to obscure the key issue of concern to the industry—that children under 12 are being injured either riding as passengers or operating larger vehicles not intended for use by such children.

I would also point out that as early as 1985 Suzuki sent letters to all its ATV owners regarding important safety concerns. You will noe that this letter, a copy of which is attached to the enclosed Suzuki response to Chairman Scanlon, contains express directions against allowing children to ride inappropriately sized ATVs or allowing children to operate ATVs without adult supervision. Similar information is also included in Suzuki's owner manuals.

At the recent hearing you very properly indicated your intention to keep an open mind on the ATV issues until the Subcommittee has completed its inquiry. Our purpose is to provide you with relevant information in order to facilitate an informed judgment on the matter by the Subcommittee. It is in this spirit, therefore, that we respectfully submit the enclosed materials and hope that they will be helpful to you in connection with your Subcommittee's review of ATV-related issues. I look forward to conferring with you on this important matter at your convenience.

Thank you for your consideration.

Sincerely,

HARRY W. CLADOUHOS.

HONDA NORTH AMERICA INC.,
Washington, DC, June 9, 1987.

HON. ALBERT GORE, Jr.,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR GORE: This letter is in reponse to your request that we submit for the record our concerns over the quality of the Consumer Product Safety Commission's (CPSC) statistical data regarding all-terrain vehicles (ATVs). The following comments are a general summary of specific materials we have given to the Committee staff and, earlier, to the Consumer Product Safety Commission.

Our basic concern is that the CPSC's use of its death and injury statistics "related to" ATVs is very unfair and misleading. American Honda is certainly concerned about *all* ATV-related accidents, and has taken many different steps to try to reduce ATV-related injuries. We will continue to make efforts to do so. However, the CPSC's use of its statistical data tends to exaggerate the ATV issue and does not help identify areas in which remedial action can be taken. The National Electronic Injury Surveillance System (NEISS) is designed only as a very rough "early warning" system to enable the Consumer Product Safety Commission to identify products that warrant further investigation. Based on daily reports from 64 hospital emergency rooms of injuries "related to" specific consumer products, the CPSC estimates consumer product related injuries throughout the United States. Thus, for example, in 1986 there were about 1,000 "ATV-related" injuries reported in NEISS hospitals, and from that figure CPSC estimates 86,400 "ATV-related" injuries nationwide. This figure has serious limitations.

First, it does not indicate what caused the injury. During the Senate hearing there was an inference that ATVs were somehow the cause of the estimated number of injuries. The CPSC has repeatedly stated that NEISS statistics (and also CPSC death statistics) do not show causation. However, when discussing ATVs, CPSC does not make this point clearly. The only thing these statistics reflect is that an ATV was associated with the injury. A close examination of the injury statistics cited by CPSC reveals incidents in which the ATV was not in any way the cause of the injury. For example, some injury statistics show people being injured loading an ATV on or off a truck or bending over to start the ATV and injuring their back, or being scratched by an overhanding branch while riding. Our review of the data shows that a large number of the injuries "related to" ATVs can in no way be affected by any kind of change to an ATV. This fact was not touched upon during the hearing.

The death statistics cited by CPSC are even more egregious. A number of the CPSC investigations of deaths clearly indicate that factors completely unrelated to all-terrain vehicles caused the deaths. For example, at least two of the deaths were caused by discharge of weapons while the person was riding an ATV and a recent death was caused by the discharge of a crossbow. The death reports are replete with situations such as people being electrocuted while pushing an ATV, and people sit-

ting still on ATVs and being struck by other vehicles. Despite the fact that common sense would easily be able to eliminate some of these deaths, CPSC continues to aggregate these figures in an attempt to justify its investigation.

Our second concern about the CPSC injury data is that the method of estimating nationwide injuries is seriously flawed. For example, the small size of the hospital sample has led to inaccuracy in the estimates. Additionally, the hospitals used for the NEISS survey are not positioned in a manner that is reflective of ATV usage nationwide. Accordingly, the NEISS statistics, considering both the deficient sample size and poor placement, are not reflective of actual ATV injuries. This problem leads to an exaggeration that does not help in addressing the issue of ATV injuries and deaths.

For example, CPSC found that 30 percent of all fatal ATV accidents involved alcohol and helmets could have saved the lives of 25 percent of the people who died of head injuries. Twenty-five percent of the deaths occurred while operating ATVs on paved roads. These are the kinds of data analyses the CPSC has that point to solutions, rather than merely raw numbers, that are not even analyzed.

The above comments are in no way meant to represent that deaths and injuries are acceptable to American Honda. They are not. American Honda and the rest of the ATV industry will continue to work vigorously to do everything we can to reduce all deaths and injuries possible.

I am also providing a description of the various safety materials and programs that Honda has undertaken to promote ATV safety.

We are looking forward to working with you and the Committee in this and other areas.

Sincerely,

TONI HARRINGTON,
Manager, Government and Public Relations.

Enclosure[1]

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[1] The enclosures are in the Committee files.